

APPENDICES

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APPENDIX A

No. 24-3394

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DUSTIN YOUNG,)	
)	
Petitioner-Appellant,)	
)	
v.)	<u>ORDER</u>
)	
JOHN R. SWANEY,)	
Madison County Sheriff;)	
BUTLER COUNTY, OH,)	
COURT OF COMMON)	
PLEAS,)	
)	
Respondents-Appellees.)	

Before: KETHLEDGE, Circuit Judge.

Dustin Young appeals the district court’s judgment dismissing his petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. He applies for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b). Because this circuit’s precedent forecloses Young’s argument, a COA is denied.

In 2017, Young was convicted after a bench trial of gross sexual imposition, in violation of Ohio Revised Code § 2907.05(A)(1), and abduction, in violation of Ohio Revised Code § 2905.02(A)(2). The convictions involved allegations that Young, a police officer employed

by a public university, had sexual contact by means of force or threat with a female coworker and restrained her liberty by putting her in fear. The trial court sentenced him to five years of community control and imposed reporting obligations on him as a Tier I sex offender. The Ohio Court of Appeals remanded so that the trial court could reconsider its denial of Young's motion for a new trial, but ultimately affirmed. *See State v. Young*, 176 N.E.3d 1074, 1089, 1115 (Ohio Ct. App. 2021), *perm. app. denied*, 179 N.E.3d 122 (Ohio 2022); *State v. Young*, No. CA2018-03-047, 2019 WL 1254197, at *5-8 (Ohio Ct. App. Mar. 18, 2019).

In January 2023, Young filed his § 2254 petition, claiming that his due process and confrontation rights were violated when the State failed to disclose that the victim had hired a civil attorney, made a demand of the university, and engaged in settlement negotiations prior to his trial. Young named as the respondent Madison County Sheriff John R. Swaney, the official responsible for overseeing Young's sex-offender registration obligations.

Swaney moved to dismiss the petition, arguing that Young was not "in custody" under 28 U.S.C. § 2254(a) based solely on his sex-offender registration requirements. *See Steverson v. Summers*, 258 F.3d 520, 522 (6th Cir. 2001) (noting that the in-custody requirement is jurisdictional). Explaining that Young had served the wrong respondent, the district court gave Young an opportunity to substitute the Butler County Court of Common Pleas given that he was still on community control when he filed his petition, but Young declined the invitation. Instead, he moved to add the Butler County court and maintain his action against Swaney, arguing that, despite this court's caselaw to the contrary, Ohio's sex-offender registration requirements satisfy the in-custody require-

ment. See *Hautzenroeder v. DeWine*, 887 F.3d 737, 741-44 (6th Cir. 2018). The district court rejected that argument and dismissed Swaney. The district court then granted the Butler County court’s unopposed motion to dismiss, concluding that Young’s motion to add the court as a respondent was filed after he had completed his community control and was no longer in custody and after the one-year statute of limitations had expired. The district court also denied a COA.

Young now moves for a COA from this court. He argues that his sex-offender registration obligations render him in custody for purposes of § 2254(a) and reasserts his constitutional challenges to his convictions. Young acknowledges that his custody argument is foreclosed by this court’s precedent but indicates that he intends to challenge the holding of *Hautzenroeder* before the en banc court and the Supreme Court, if necessary.

To obtain a COA, an applicant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the denial of a claim is based on the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the petition is denied on procedural grounds, the petitioner must show “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.*

Here, reasonable jurists could not debate that Young’s custody argument is foreclosed by *Hautzenroeder*. In that case, this court held that Ohio’s sex-offender registration obligations are “collateral consequences” of a conviction that, although burdensome, do

not render a petitioner “in custody” for purposes of § 2254(a). 887 F.3d at 740-44; *see Corridore v. Washington*, 71 F.4th 491, 497-99 (6th Cir. 2023) (reaffirming this court’s decision in *Hautzenroeder*). Young counters that *Hautzenroeder*’s holding is debatable, pointing to the Third Circuit’s decision in *Piasecki v. Court of Common Pleas*, 917 F.3d 161, 166-73 (3d Cir. 2019), which held that Pennsylvania’s similar sex-offender registration obligations are sufficiently severe to satisfy the in-custody requirement. Most circuits to weigh in on this issue have sided with this court, however. *See Clements v. Florida*, 59 F.4th 1204, 1212 (11th Cir. 2023) (listing cases).

Despite Young’s reliance on *Piasecki*, this court is bound by *Hautzenroeder*. “[A] published prior panel decision ‘remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.’” *United States v. Elbe*, 774 F.3d 885, 891 (6th Cir. 2014) (quoting *Salmi v. Sec’y of Health & Hum. Servs.*, 774 F.2d 685, 689 (6th Cir. 1985)). And when there is binding precedent from this court, “any persuasive authority from other Circuits is irrelevant.” *Freeman v. Wainwright*, 959 F.3d 226, 232 (6th Cir. 2020). As this court has determined previously, “no COA should issue where the claim is foreclosed by binding circuit precedent ‘because reasonable jurists will follow controlling law.’” *Mitchell v. United States*, 43 F.4th 608, 616 (6th Cir. 2022) (alteration omitted) (quoting *Hamilton v. Sec’y, Fla. Dep’t of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015)).

For these reasons, Young’s application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT

[signature]

Kelly L. Stephens, Clerk

APPENDIX B

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

Dustin Young,)
)
Petitioner,) Case No.: 1:23-cv-037
)
vs.) Judge Michael R. Barret
)
Butler County Court of)
Common Pleas,)
)
Respondent.)
)

ORDER

This matter is before the Court on two separate, but related, Reports and Recommendations (R&R) entered by the Magistrate Judge on December 27, 2023 (Doc. 26) and on February 2, 2024 (Doc. 29).

I. PREVIOUS R&R

The October 10, 2023 R&R (as supplemented on October 27, 2023). Represented by counsel, Dustin Young, who resides in London, Madison County, Ohio, filed a Petition for a Writ of Habeas Corpus on January 17, 2023. (Doc. 1). He named Madison County Sheriff John R. Swaney as Respondent. Young alleged that he was “confin ed” by the Madison County Sheriff because “[h]e is serving a 15-year Adam Walsh sex-registration sentence

imposed by the Butler County Common Pleas Court, Hamilton, Ohio; *State v. Young*, Case No. CR2017-04-0695.” (Id. ¶ 1).¹ Respondent filed a Rule 12(b)(1) Motion to Dismiss, arguing that this Court lacked subject-matter jurisdiction because Young was not “in custody” as required by 28 U.S.C. §§ 2241(c)(3) and 2254(a). (Doc. 6 PAGEID 16–17 (citing *Hautzenroeder v. DeWine*, 887 F.3d 737, 741 (6th Cir. 2018)).² In an R&R issued on October 10, 2023, the Magistrate Judge agreed that *Hautzenroeder* required that the Madison County Sheriff be dismissed with prejudice as a party to this case. (See Doc. 16 PAGEID 704). But because Young filed his Petition while he was still on community control, the Magistrate Judge observed that “[t]he Court would therefore entertain a motion to substitute the Butler County Court of Common Pleas[.]” (Id.).

On October 25, 2023, Young filed a “Motion to Add Respondent [Butler County Common Pleas Court] **and to Maintain the Habeas Action against Respondent Swaney**”. (Doc. 19 (bold emphasis added)). The Magistrate Judge then filed a Supplement (Doc. 20) (on October 27, 2023) to his October 10, 2023 R&R in which he granted Young’s (tardy) Motion to Add (Doc. 19) but reiterated his recommendation that the Madison County Sheriff be dismissed:

Petitioner “persists in maintaining this action against the Madison Sheriff as a respondent.” (ECF No. 19, PageID 710). But there is Sixth Circuit precedent squarely to the contrary. In *Hautzenroeder v. DeWine*, 887 F.3d 737 (6th Cir. 2018), [] being required to register and report under the Adam Walsh Act does not constitute

¹ After a bench trial, Young was convicted of gross sexual imposition and abduction. (Doc. 1 ¶ 5).

² Young did not respond.

being “in custody” for purposes of habeas corpus. To the same effect is *Leslie v. Randle*, 296 F.3d 518 (6th Cir. 2002). In the Report and Recommendations recommending dismissal of the Madison County Sheriff [Doc. 16], the Magistrate Judge cited *Hautzenroeder*, but Petitioner has failed to discuss or even cite it. Because it remains binding published precedent of the Sixth Circuit, the Magistrate Judge “persists” in his recommendation that the Madison County Sheriff, John Swaney, be dismissed as a respondent. If there are aspects of [] Adam Walsh reporting that Petitioner wishes to challenge as unconstitutional, he may be able to make that challenge in a case under 42 U.S.C. § 1983, but not in habeas corpus.

(Doc. 20 PAGEID 713–14 (footnote omitted) (underline emphasis added)).

Petitioner’s timely objection to the Magistrate Judge’s (October 27, 2023) Supplement. Although Young finally acknowledged *Hautzenroeder* in his Objection (Doc. 22), he insisted that it is wrongly decided.³ He explained that the Third Circuit⁴ had (subsequently) reached a “contrary” conclusion and advised that the

³ “*Hautzenroeder* overlooks Ohio law that sex registration under the Adam Walsh Act [AWA] is a criminal sanction, imposed at sentencing, that must be included in the judgment. *State v. Halsey*, 12th Dist., 2016- Ohio-7990, ¶13; R.C. 2929.23(B). In that way, it is like a prison term, a probation term, or parole. The Madison Sheriff, then, is enforcing Young’s criminal judgment by requiring his AWA registration duties. That cannot be construed as a collateral consequence because it is a *direct consequence* of the criminal judgment. Young is therefore in custody under § 2254 under Ohio law.” (Doc. 22 PAGEID 718 (italics emphasis in original)).

⁴ *Piasecki v. Court of Common Pleas, Bucks Cnty., PA*, 917 F.3d 161 (3d Cir. 2019).

United States Supreme Court would decide soon whether to resolve this circuit conflict.⁵ The Supreme Court denied the petition for certiorari⁶ on which Young pinned his hopes, however, and the undersigned dismissed Madison County Sheriff John R. Swaney from this case on December 11, 2023.⁷

II. PENDING R&Rs

The December 27, 2023 R&R. As background, the Magistrate Judge directed (new Respondent) the Butler County Court of Common Pleas to file an answer conforming to the requirements of Rule 5 of the Rules Governing Section 2254 Cases. (Doc. 21, Amended Order for Answer, entered 10/27/2023). It complied on November 29, 2023, also asserting two affirmative defenses. (Doc. 24). First, Respondent contends that this Court lacks subject-matter jurisdiction over Young’s Petition because he was not “in custody” at the time he filed his motion to add the Butler County Court of Common Pleas; rather, he “was only subject to the collateral consequence of the sex offender registration[,]” which, under *Hautzenroeder*, does not qualify as “in custody”. (Id. PAGEID 1427–28). Young cannot rely on Fed. R. Civ. P. 15(c)(1)(C) to relate

⁵ *Clements v. Florida*, 59 F.4th 1204 (11th Cir. 2023), petition for cert. filed, (U.S. Aug. 1, 2023) (No. 23-107).

⁶ See *Clements v. Florida*, 59 F.4th 1204 (11th Cir.), cert. denied, No. 23-107, 144 S.Ct. 488 (Mem), 2023 WL 8531893 (Dec. 11, 2023).

⁷ (See Doc. 25 PAGEID 1435 (“Young’s disagreement aside, the majority opinion in *Hautzenroeder* is binding Sixth Circuit precedent that this district court—sitting in Ohio—must apply. Accordingly, the Court: **ACCEPTS** and **ADOPTS** the Magistrate Judge’s October 10, 2023 Report and Recommendations (Doc. 16), as supplemented (Doc. 20); **OVERRULES** Petitioner’s objections (Docs. 19, 22); and **GRANTS** Respondent’s Motion to Dismiss (Doc. 6) filed pursuant to Fed. R. Civ. P. 12(b)(1). Madison County Sheriff John R. Swaney is hereby dismissed with prejudice from this case.”)).

back, moreover, because he asked to *add* the Butler County Court of Common Pleas as a respondent *along with* Madison County Sheriff Swaney. (Id. PAGEID 1428).⁸ Second, Respondent maintains that Young’s Petition should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because it is time-barred. (Id. PAGEID 1428–29). A one-year period of limitation applies to an application for a writ of habeas corpus, which begins on the date that judgment becomes final “by the conclusion of direct review[.]” 28 U.S.C. § 2244(d)(1)(A). Young timely filed his petition against the Madison County Sheriff on January 17, 2023. But his motion to add the Butler County Court of Common Pleas was not filed until October 25, 2023, and, in the Sixth Circuit, “claims against *additional* parties do not relate back.” (Doc. 24 PAGEID 1429 (quoting *Ham v. Sterling Emergency Servs. of the Midwest, Inc.*, 575 F. App’x 610, 615 (6th Cir. 2014) (italics emphasis in the original) (citing, *inter alia*, *Asher v. Unarco Material Handling, Inc.*, 596 F.3d 313, 318 (6th Cir. 2010))))).

Young had 21 days, or until December 20, 2023, to file a reply to the Butler County Court of Common Pleas’ Answer. (Amended Order for Answer, Doc. 21 PAGEID 717 (“Petitioner may, not later than twenty-one days after filing of the answer, file and serve a reply to the answer.”)). He filed nothing. On December 27, 2023, because the application was ripe for decision, the Magistrate Judge found both affirmative defenses to be well-taken and recommended that Respondent Butler County Court of Common Pleas (likewise) be dismissed with prejudice. (Doc. 26 PAGEID 1437). He also recommended that

⁸ Fed. R. Civ. P. 15(c)(1)(C) provides in pertinent part, “An amendment to a pleading relates back to the date of the original pleading when: . . . the amendment **changes the party or the naming of the party** against whom a claim is asserted[.]” (Bold emphasis added).

Young be denied a certificate of appealability.⁹ (*Id.* PAGEID 1438).

The February 2, 2024 R&R. Young did not file an objection to the December 27, 2023 R&R, but (within the 14-day period to object) he did file a Motion for a Certificate of Appealability “on the Ohio sex-offender custody question.” (Doc. 27 PAGEID 1439). He explains:

First, there is a circuit split on whether sex-offender reporting is custody under habeas. *Pias-ewski v. Court of Common Pleas, Bucks Cnty., PA*, 917 F.3d 161 (3rd Cir. 2019). This shows that actual jurists, not just reasonable ones, debate whether sex-offender reporting is custody under habeas. *Slack v. McDaniel*, 529 U.S. 473, 483-484 (2000).

Second, the 6th Circuit misunderstood Ohio law in holding that sex-offender reporting is collateral to criminal punishment. Instead, Ohio’s sex-offender duties are punishment that must be included in the sentencing judgment for enforce-

⁹ “The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. . . .” Rule 11(a) of the Rules Governing § 2254 Cases in the United States District Courts. “In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court[,] . . . the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). . . . If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.” Fed. R. App. P. 22(b)(1).

ment. See, e.g., *State v. Emanuel*, 1st Dist. C-190450, 2021-Ohio-448, ¶ 5 (“This court has held repeatedly that any tier classification under Ohio’s version of the Adam Walsh Act is a criminal sanction that is part of the sentence and must be set forth in the sentencing entry to be effective.[”].) Ohio defines state law, and its decision to prescribe sex reporting as punishment, not a collateral consequence, is binding on federal courts.

(Id. PAGEID 1439–40 (*italics emphasis in the original*)). Respondent Butler County Court of Common Pleas filed a memorandum in opposition. (Doc. 28). The Magistrate Judge thereafter entered an R&R on February 2, 2024, in which he renewed his recommendation that a certificate of appealability be denied:

The Magistrate Judge agrees that *Piasecki* is a well-reasoned opinion relying on relevant Supreme Court decisions interpreting the “custody” requirement for habeas corpus. But *Piasecki* is irrelevant to the issue of a certificate of appealability in this case. What it shows is that reasonable jurists can disagree about the meaning of “custody” in habeas corpus jurisprudence generally. What it does **not** show is that any reasonable jurist would conclude that sex offender registration is sufficient custody in the Sixth Circuit so long as *Hautzenroeder* is controlling law here. As a published opinion of the Sixth Circuit precisely [o]n point, it must be followed by all District Court[s] and all subsequent panels unless overruled *en banc*. See *Salmi v. Sec’y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985) (“A panel of this Court cannot overrule the decision of another panel. The prior decision remains

controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this court sitting *en banc* overrules the prior decision.”). While reasonable jurists might debate the meaning of custody in general, it is indisputable that sex offender registration is not custody in the Sixth Circuit now.

The requirement for a certificate of appealability on the part of an unsuccessful habeas petitioner is an unusual aspect of habeas law. Ordinarily any [un]successful litigant in the District Court can appeal. The requirement was added to Title 28 as part of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No[.] 104-132, 110 Stat. 1214) (the “AEDPA”). As enacted, it imposes an obligation on the courts of appeal[s], but those courts promptly “delegated” the initial decision to the districts courts and that delegation is now codified in the Rules Governing § 2254 Cases. If a district court errs in denying a certificate, the court of appeals retains de novo authority to grant a certificate. If that court were to adopt a broader understanding of the criteria for appeal (if, for example, the reviewing judge wanted to give the en banc court an opportunity to overrule *Hautzenroeder*), they could grant a certificate with little risk of reversal. Our task, however, is narrower. If *Hautzenroeder* did not exist and there were other district courts which had ruled as the *Pi[a]s[e]cki* court did, the undersigned would have no hesitation in recommending a certificate. But that is not our situation.

Respondent Butler County Court of Common Pleas points out that *Pi[a]s[e]cki* is an outlier

(ECF No. 28 PageID 1442, citing *Clement[s] v. Florida*, 59 F.4th 1204[, 1212] (11th Cir. 2023)(“The great majority of the circuit courts have held that persons subject to sexual offender registration and reporting statutes are not ‘in custody’ for purposes of habeas corpus relief[.]”).

Butler County also notes [] the fact that Ohio treats offender registration as punishment and imposes it as part of the criminal judgment is not determinative of custody. (ECF No. 28, PageID 1442, citing *Corridore v. Washington*, 71 F.4th 491, 496 (6th Cir. 2023)). A fine imposed as part of a criminal judgment is obviously punitive, but that does not make it custodial.

(Doc. 29 PAGEID 1447-48 (bold emphasis in original) (underline emphases added)).

Legal Standard. “A certificate of appealability may issue only if the petitioner makes ‘a substantial showing of the denial of a constitutional right.’” *Dufresne v. Palmer*, 876 F.3d 248, 252 (6th Cir. 2017) (quoting 28 U.S.C. § 2253(c)(2)). “A petitioner may meet this standard by showing that reasonable jurists could debate whether the petition should have been determined in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Id.* at 252-53 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983))). “If the petition was denied on procedural grounds, **the petitioner must show**, ‘at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and **that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.**” *Id.* (bold emphases added).

As noted earlier, the Court dismissed Madison County Sheriff John R. Swaney from Young’s petition for lack of subject-matter jurisdiction on December 11, 2023. (Doc. 25). It did not reach Young’s underlying constitutional claims. To merit a certificate of appealability, then, Young must show “that jurists of reason” would find this Court’s predicate jurisdictional ruling “debatable”.¹⁰

Analysis of Petitioner’s Objections to the February 2, 2024 R&R. Young timely filed objections to the February 2, 2024 R&R. (Doc. 30).¹¹ In support of his argument that “[t]he ‘in custody’ question is debatable (and in fact debated) by reasonable circuit judges across the country[,]” he begins:

Magistrate Judge Merz was correct when he acknowledged that “reasonable jurists can disagree about the meaning of ‘custody’ in habeas corpus jurisprudence.” Doc. 29 at 2. That should resolve the request for a certificate of appealability here.

(Doc. 30 PAGEID 1454). Young has materially misquoted the Magistrate Judge, however, by leaving out a critical adverb (“generally”) that ends the sentence. And by omitting the sentence that follows:

What [*Piasecki*] shows is that reasonable jurists can disagree about the meaning of “custody” in habeas corpus jurisprudence generally. What it does not show is that any reasonable jurist would conclude that sex offender registration is

¹⁰ “The ‘in custody’ requirement of 2254(a) is jurisdictional, so we must address it first and before any merits-related matters like the applicable statute of limitations.” *Clements v. Florida*, 59 F.4th 1204, 1209 (11th Cir. 2023) (citing, inter alia, *Maleng v. Cook*, 490 U.S. 488, 490 (1989)).

¹¹ Respondent Butler County Court of Common Pleas timely responded to Young’s objections. (Doc. 31).

sufficient custody in the Sixth Circuit so long as Hautzenroeder is controlling law here.

(Doc. 29 PAGEID 1447 (bold emphasis in original) (underline emphases added)). Continuing, Young claims that both the Sixth Circuit (in *Corridore v. Washington*) and the Third Circuit (in *Piasecki*) “understood that the custody analysis does not turn on bright-line rules.” (Id. PAGEID 1454). But this is not an accurate statement, at least as to Adam Walsh Act reporting. In the Sixth Circuit, a bright line was drawn in *Hautzenroeder* (decided in 2018 before *Piasecki*), which was cited with approval in *Corridore* (decided in 2023 after *Piasecki*).¹²

¹² In *Corridore*, the Sixth Circuit determined that a convicted (but released from prison and discharged from parole) Michigan sex offender subject to lifetime registration and electronic monitoring was not “in custody” for purposes of habeas corpus jurisdiction. Quoting from the majority opinion:

Most would agree that the[lifetime electronic monitoring] requirements are intrusive and beyond what the typical person is subjected to. But that’s not the question. The question is whether all these requirements limit Corridore’s physical movement to the point that they are severe restraints on liberty. See *Hautzenroeder*, 887 F.3d at 741. They’re not. They are simply collateral consequences of conviction. And our caselaw shows why.

In *Hautzenroeder*, we evaluated Ohio’s similar sex-offender registration laws. Because of *Hautzenroeder*’s offense, she had to live more than 1,000 feet away from school premises. See Ohio Rev. Code § 2950.034(A)–(B). She had to personally register with the sheriff of the county in which she lived, worked, and went to school. Id. § 2950.04. And as a Tier III sex offender in Ohio, *Hautzenroeder*’s in-person registration process restarted every ninety days— meaning *Hautzenroeder* had to check in with the sheriff four times a year. Id. § 2950.06(A), (B)(3), (C)(1). *Hautzenroeder* also had to provide a host of information for Ohio’s internet registry—things like travel documents, license plate numbers, DNA specimen, and mental health treatment. Id. §§ 2950.04(B), (C), 2950.13(A), 2950.14(B). And the sheriff was required by statute to let the surrounding community

Young contends that “[e]ven where a claim is ‘barred by circuit precedent,’ ‘[s]o long as there remains the possibility of en banc reconsideration and Supreme Court review, circuit law does not completely foreclose all avenues for relief.’” (Doc. 30 PAGEID 1456 (quoting *Harris v. Johnson*, 376 F.3d 414, 418–19 (5th Cir. 2004))). *Harris* does not stand for this proposition; rather, this is one of four arguments made by a death row inmate, all of which were rejected. Nevertheless, the undersigned is not persuaded that the points made by Judge Moore in her dissent in *Corridore* portend the “possibility” of *en banc* reconsideration of *Hautzenroeder*.

The majority begins its analysis by noting that “Corridore makes two arguments on appeal. First, he says that Michigan’s LEM¹³ renders him ‘in custody.’ Second, he argues that even if LEM alone doesn’t satisfy the custody

know that Hautzenroeder was a sex offender. Id. § 2950.11(A). And if Hautzenroeder violated these requirements, she faced potential prison time. Id. § 2950.99(A)(1).

Even in the face of all these requirements, we said that Ohio’s sex-offender registration requirements were collateral consequences of conviction rather than severe restraints on liberty. We explained that “Hautzenroeder’s freedom of movement [wa]s unconstrained, her registration and reporting obligations notwithstanding.” *Hautzenroeder*, 887 F.3d at 741. . . .

Addressing Hautzenroeder’s arguments, we noted that any criminal conviction resulting from violating the registration requirements would be a separate criminal violation—not a continuation of the initial sex offense. *Hautzenroeder*, 887 F.3d at 743 (explaining that this was not “reimprisonment stemming from her original conviction”). And the fact that the requirements were part of the sentence didn’t tell us anything about the “in custody” requirement. Id. at 744 (“Whether a registration scheme is punitive for ex post facto purposes leaves unanswered the ‘in custody’ question.”). 71 F.4th at 497–98 (footnote omitted) (bold emphases added).

¹³ LEM is an acronym for “lifetime electronic monitoring”.

requirement, SORA¹⁴ either alone or along with LEM does.” 71 F.4th at 494. As for LEM, the majority determined that Michigan’s monitoring requirements, though “intrusive,” did not “limit Corridore’s physical movement to the point that they are severe restraints on liberty.” Id. at 497 (citing *Hautzenroeder*, 887 F.3d at 741). The majority thereafter determined that “Corridore forfeited any argument he had on SORA by not raising it below.” Id. at 499. “But even if we reached his arguments on SORA, we’d come out the same way.” Id. at 500–01 (citing *Hautzenroeder*). The majority also was unpersuaded by Corridore’s “alternative [and likewise forfeited] argument that even if SORA alone or LEM alone isn’t enough to meet the ‘in custody’ requirement, the combination of the two is.” Id. at 501. “[N]either LEM nor SORA encompasses custodial requirements. So the combination of LEM and SORA—both collateral consequences—doesn’t do much to get Corridore closer to the mark.” Id.

At no point in her dissent does Judge Moore say that *Hautzenroeder* is wrongly decided. Rather, she would hold “that being subject to LEM alone, even absent the burdens of SORA, is sufficient to place an individual ‘in custody’ for purposes of federal habeas jurisdiction.” Id. at 507 (Moore, J., dissenting). That said, and in contrast to the majority’s view, Corridore “did not concede that the burdens of SORA in combination with LEM do not constitute custody[]” and “nothing in the text of the district court’s certificate of appealability suggests that Corridore’s argument about the combined restraints of LEM and SORA is not properly before this court.” Id. (citations to the record omitted). True, Judge Moore credits *Piasecki* as “particularly instructive in analyzing the restraints imposed by SORA.” But her topic sentence reads, “SORA’s

¹⁴ SORA is an acronym for “Sex Offenders Registration Act”.

requirements, **in combination with LEM**, constitute a significant restraint on Corridore’s liberty and thus he is ‘in custody’ for purposes of federal habeas jurisdiction.” *Id.* at 508–09 (bold emphasis added). She then distinguishes *Hautzenroeder*:

The majority’s reliance on *Hautzenroeder* is inapposite. It is true that *Hautzenroeder* held that the restrictions of Ohio’s sex offender registry statute were not custodial. 887 F.3d at 741. ***Hautzenroeder*, however, did not consider the cumulative burdens of sex-offender registry and LEM.** And the petitioner in *Hautzenroeder* claimed only that the requirements of registry ‘chill[] registrants’ freedom of movement,’ *id.*, whereas Corridore has demonstrated that both LEM and the reporting requirements of SORA represent physical restraints on his liberty. **Ohio’s sex-offender registration scheme, as reviewed in *Hautzenroeder*, is not ‘almost identical’ to SORA as the majority claims, Maj. Op. at 501, because the Ohio scheme did not involve in-person reporting requirements, unlike the burdensome in-person reporting requirements of [Michigan’s] SORA.**

Id. at 510 (bold emphases added). All in all, the Court is hard put to find anything in Judge Moore’s dissent that heralds *en banc* review of *Hautzenroeder*.

Finally, Young asserts that “the ongoing circuit split over the ‘in custody’ issue makes Supreme Court review foreseeable.” (Doc. 30 PAGEID 1456). But wishing doesn’t make it so.¹⁵ *Piasecki* is an outlier¹⁶ and, as noted,

¹⁵ Lev Grossman, *The Magicians* (2009).

¹⁶ *Clements*, 59 F.4th at 1212 (“As noted, the great majority of the circuits have held that persons subject to sexual offender registration and reporting statutes are not ‘in custody’ for purposes of habeas

the Supreme Court very recently declined review (without comment, as is typical). See *Clements v. Florida*, 59 F.4th 1204 (11th Cir.), *cert. denied*, 144 S.Ct. 488 (2023). Perhaps the reality that “sex offender and registration statutes differ (sometimes greatly) from state to state and change over time[]”¹⁷ played a role.

III. CONCLUSION

The Court **ACCEPTS** the recommendations made by the Magistrate Judge in both his December 27, 2023 Report and Recommendations (Doc. 26) and his February 2, 2024 Report and Recommendations (Doc. 29), such that:

1. Respondent Butler County Court of Common Pleas is hereby dismissed with prejudice. Because reasonable jurists would not disagree with this conclusion, Petitioner is denied a certificate of appealability on this issue.

2. Petitioner’s objections (Doc. 30) to the February 2, 2024 R&R are overruled. Petitioner’s

corpus relief. See *Williamson v. Gregoire*, 151 F.3d 1180, 1183–84 (9th Cir. 1998) (Washington); *Henry v. Lungren*, 164 F.3d 1240, 1241–42 (9th Cir. 1999) (California); *McNab v. Kok*, 170 F.3d 1246, 1247 (9th Cir. 1999) (Oregon); *Leslie v. Randle*, 296 F.3d 518, 521–23 (6th Cir. 2002) (Ohio); *Virsnieks v. Smith*, 521 F.3d 707, 719–20 (7th Cir. 2008) (Wisconsin); *Wilson[v. Flaherty]*, 689 F.3d [322,] 335–39 [(4th Cir. 2012)] (Texas and Virginia); *Calhoun v. Att’y Gen. of Colo.*, 745 F.3d 1070, 1073–74 (10th Cir. 2014) (Colorado); *Sullivan v. Stephens*, 582 F. App’x 375, 375 (5th Cir. 2014) (Texas); *Hautzenroeder v. Dewine*, 887 F.3d 737, 739–40 (6th Cir. 2018) (Ohio); *Munoz v. Smith*, 17 F.4th 1237, 1244 (9th Cir. 2021) (Nevada). Only the Third Circuit has come to a contrary conclusion. See *Piasecki v. Ct. of Common Pleas, Bucks Cnty., Pa.*, 917 F.3d 161, 177 (3d Cir. 2019) (Pennsylvania).) (footnote omitted).

¹⁷ *Clements*, 59 F.4th at 1212.

Motion for a Certificate of Appealability (Doc. 27) (on the Ohio sex-offender custody question as it relates to the Court’s December 11, 2023 Order (Doc. 25) dismissing Respondent Madison County Sheriff John R. Swaney) is hereby **DENIED**.¹⁸

3. Petitioner’s Petition (Doc. 1) is hereby dismissed, and this matter is now **CLOSED** and **TERMINATED** from the active docket of this Court.

IT IS SO ORDERED.

/s/ Michael R. Barrett

Michael R. Barrett,
Judge United States District Court

¹⁸ Respondent Butler County Court of Common Pleas argues (in its response to Young’s objections) that Young is forever precluded from seeking a certificate of appealability on this issue because the Court’s December 11, 2023 Order dismissing Sheriff Swaney was not a “final” order. (Doc. 31 PAGEID 1462-63). But it was final as to Sheriff Swaney and this Court is obliged to “issue or deny a certificate of appealability” in connection therewith. See Rule 11(a) of the Rules Governing § 2254 Cases in the United States District Courts. *Pouncy v. Palmer*, 993 F.3d 461, 465 (6th Cir. 2021), cited by Butler County, examined whether collateral orders—such as orders denying bail while a petitioner’s petition is under consideration--require a certificate of appealability. They do not. *Id.*

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

DUSTIN YOUNG,

Petitioner, : Case No. 1:23-cv-37

-vs.-

District Judge
Michael R. Barrett

JOHN R. SWANEY,

Magistrate Judge
Respondent. : Michael R. Merz

**REPORT AND RECOMMENDATIONS ON MOTION
FOR CERTIFICATE OF APPEALABILITY**

This habeas corpus case is before the Court on Petitioner's Motion for a Certificate of Appealability (ECF No. 27) which Respondent opposes (ECF No. 28).

Judge Barrett has already dismissed with prejudice the case against the original Respondent, the Sheriff of Madison County (ECF No. 25). The Magistrate Judge has recommended dismissing the remaining Respondent, the Butler County Court of Common Pleas (ECF No. 26). That Report includes a recommendation that the Court deny a certificate of appealability. *Id.* at PageID 1438. Neither party objected to that Report, but Petitioner filed the instant Motion within the time allowed for objections and is therefore entitled to its consideration.

Petitioner agrees that binding Sixth Circuit precedent holds that a person required to register as a sex offender is not in custody for habeas corpus purposes. Motion at PageID 1439, citing *Hautzenroeder v. DeWine*, 887 F.3d 737 (6th Cir. 2018). However, he argues, reasonable jurists could and have disagreed with that conclusion, citing *Piasecki v. Court of Common Pleas, Bucks Cnty., PA*, 917 F.3d 161 (3rd Cir. 2019).

The Magistrate Judge agrees that *Piasecki* is a well-reasoned opinion relying on relevant Supreme Court decisions interpreting the “custody” requirement for habeas corpus. But *Piasecki* is irrelevant to the issue of a certificate of appealability in this case. What it shows is that reasonable jurists can disagree about the meaning of “custody” in habeas corpus jurisprudence generally. What it does **not** show is that any reasonable jurist would conclude that sex offender registration is sufficient custody in the Sixth Circuit so long as *Hautzenroeder* is controlling law here. As a published opinion of the Sixth Circuit precisely in point, it must be followed by all District Court and all subsequent Sixth Circuit panels unless overruled *en banc*. See *Salmi v. Sec'y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985) (“A panel of this Court cannot overrule the decision of another panel. The prior decision remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting *en banc* overrules the prior decision.”). While reasonable jurists might debate the meaning of custody in general, it is indisputable that sex offender registration is not custody in the Sixth Circuit now.

The requirement for a certificate of appealability on the part of an unsuccessful habeas petitioner is an unusual aspect of habeas law. Ordinarily any successful litigant in the District Court can appeal. The requirement was added

to Title 28 as a part of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No 104-132, 110 Stat. 1214)(the "AEDPA"). As enacted, it imposes an obligation on the courts of appeal, but those courts promptly “delegated” the initial decision to the district courts and that delegation is now codified in the Rules Governing § 2254 Cases. If a district court errs in denying a certificate, the court of appeals retains de novo authority to grant a certificate. If that court were to adopt a broader understanding of the criteria for appeal (if, for example, the reviewing judge wanted to give the en banc court an opportunity to overrule *Hautzenroeder*), they could grant a certificate with little risk of reversal. Our task, however, is narrower. If *Hautzenroeder* did not exist and there were other district courts which had ruled as the *Piesacki* court did, the undersigned would have no hesitation in recommending a certificate. But that is not our situation.

Respondent Butler County Court of Common Pleas points out that *Piesacki* is an outlier (ECF No. 28, PageID 1442, citing *Clement v. Florida*, 59 F.4th 1204 (11th Cir. 2023)) (“The great majority of the circuit courts have held that persons subject to sexual offender registration and reporting statutes are not ‘in custody’ for purposes of habeas corpus relief”). *Id.* at 1212.

Butler County also notes that the fact that Ohio treats offender registration as punishment and imposes it as part of the criminal judgment is not determinative of custody. (ECF No. 28, PageID 1442, citing *Corridore v. Washington*, 71 F.4th 491, 496 (6th Cir. 2023)). A fine imposed as part of a criminal judgment is obviously punitive, but that does not make it custodial.

Accordingly, the Magistrate Judge again recommends that Petitioner be denied a certificate of appealability.

February 1, 2024.

APPENDIX D
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Dustin Young,)	
)	
Petitioner,)	Case No.: 1:23-cv-037
)	
vs.)	Judge Michael R. Barret
)	
Butler County Court of)	
Common Pleas,)	
)	
Respondent.)	
)	

ORDER

This matter is before the Court on the Magistrate Judge’s October 10, 2023 Report and Recommendations (R&R) (Doc. 16), as supplemented (Doc. 20).

Represented by counsel, Dustin Young, who resides in London, Madison County, Ohio, filed a Petition for a Writ of Habeas Corpus on January 17, 2023. (Doc. 1). He named Madison County Sheriff John R. Swaney as Respondent. Young alleges that he is “confined” by the Madison County Sheriff because “[h]e is serving a 15-year Adam Walsh sex-registration sentence imposed by the Butler County Common Pleas Court, Hamilton, Ohio;

State v. Young, Case No. CR2017-04-0695.” (Id. ¶ 1).¹ Respondent filed a Rule 12(b)(1) Motion to Dismiss, arguing that this Court lacks subject-matter jurisdiction because Young is not “in custody” as required by 28 U.S.C. §§ 2241(c)(3) and 2254(a). (Doc. 6 PAGEID 16–17 (citing *Hautzenroeder v. DeWine*, 887 F.3d 737, 741 (6th Cir. 2018)). Young filed nothing in response.

In his October 10, 2023 R&R, the Magistrate Judge agrees that *Hautzenroeder* requires that the Madison County Sheriff be dismissed with prejudice as a party to this case. (Doc. 16 PAGEID 704). But because Young filed his Petition while he was still on community control, the Magistrate Judge observed that “[t]he Court would therefore entertain a motion to substitute the Butler County Court of Common Pleas, made not later than October 23, 2023.” (Id. PAGEID 704–05).²

Young filed a “Motion to Add Respondent [Butler County Common Pleas Court] and to Maintain the Habeas Action against Respondent Swaney” on October 24, 2023 (FORMER Doc. 18) using an incorrect event type.³

¹ Young “was charged with Gross Sexual Imposition, Kidnapping, and two counts of Abduction[.] . . . He tried his case to the bench, which convicted him on the Gross Sexual Imposition and Abduction counts but acquitted him on the Kidnapping and second Abduction count. The trial court sentenced Young to community control and 15-years of Adam Walsh sex registration and reporting duties.” (Doc. 1 ¶ 5).

² As usual, the parties were given proper notice under Fed. R. Civ. P. 72(b), including notice that they may forfeit rights on appeal if they failed to file objections to the R&R in a timely manner. *See United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981); *see also Berkshire v. Dahl*, 928 F.3d 520, 530 (6th Cir. 2019).

³ The Court construes that portion of Young’s Motion “to Maintain the Habeas Action against Respondent Swaney” as an objection to the October 10, 2023 R&R and considers it timely because it was originally, albeit incorrectly, filed within the 14-day time period.

The Clerk required counsel to refile the Motion the next day, October 25, 2023. (Doc. 19). On October 27, 2023, the Magistrate Judge filed a Supplement (Doc. 20) to his October 10, 2023 R&R in which he granted Young’s (tardy) Motion to Add but reiterated his recommendation that the Madison County Sheriff be dismissed:

Petitioner claims he is in custody by virtue of his registration and reporting obligations. Supervision of his compliance with those provisions rests with the Sheriff of his county of residence, Madison County. However being required to register and report under the Adam Walsh Act does not constitute being “in custody” for purposes of habeas corpus. *Hautzenroeder v. DeWine*, 887 F.3d 737 (6th Cir. 2018). Therefore Respondent Sheriff of Madison County should be dismissed with prejudice as a party to this case.

(Doc. 16 PAGEID 704). The Magistrate Judge additionally noted that Young fails “to discuss or even cite” *Hautzenroeder*, which “remains binding published precedent of the Sixth Circuit[.]” (Doc. 20 PAGEID 713–14).⁴

⁴ Young instead cites *Corridore v. Washington*, 71 F.4th 491 (6th Cir. 2023), where the Sixth Circuit determined that a convicted (but released from prison and discharged from parole) Michigan sex offender subject to lifetime registration and electronic monitoring was not “in custody” for purposes of habeas corpus jurisdiction. Young parrots points made in the dissent, but completely ignores the majority’s reasoning, which cites *Hautzenroeder* with approval and in support:

Most would agree that the[lifetime electronic monitoring] requirements are intrusive and beyond what the typical person is subjected to. But that’s not the question. The question is whether all these requirements limit Corridore’s physical movement to the point that they are severe restraints on liberty. See *Hautzenroeder*, 887 F.3d at 741. They’re not. They are simply collateral consequences of conviction. And our caselaw shows why.

On November 9, 2023, Young filed an objection (Doc. 22) to the Magistrate Judge’s October 27, 2023 Supplement. He finally acknowledges Hautzenroeder but

In *Hautzenroeder*, we evaluated Ohio’s similar sex-offender registration laws. Because of Hautzenroeder’s offense, she had to live more than 1,000 feet away from school premises. See Ohio Rev. Code § 2950.034(A)–(B). She had to personally register with the sheriff of the county in which she lived, worked, and went to school. *Id.* § 2950.04. And as a Tier III sex offender in Ohio, Hautzenroeder’s in-person registration process restarted every ninety days—meaning Hautzenroeder had to check in with the sheriff four times a year. *Id.* § 2950.06(A), (B)(3), (C)(1). Hautzenroeder also had to provide a host of information for Ohio’s internet registry—things like travel documents, license plate numbers, DNA specimen, and mental health treatment. *Id.* §§ 2950.04(B), (C), 2950.13(A), 2950.14(B). And the sheriff was required by statute to let the surrounding community know that Hautzenroeder was a sex offender. *Id.* § 2950.11(A). And if Hautzenroeder violated these requirements, she faced potential prison time. *Id.* § 2950.99(A)(1).

Even in the face of all these requirements, we said that Ohio’s sex-offender registration requirements were collateral consequences of conviction rather than severe restraints on liberty. We explained that “Hautzenroeder’s freedom of movement [wa]s unconstrained, her registration and reporting obligations notwithstanding.” *Hautzenroeder*, 887 F.3d at 741. . . .

Addressing Hautzenroeder’s arguments, we noted that any criminal conviction resulting from violating the registration requirements would be a separate criminal violation—not a continuation of the initial sex offense. *Hautzenroeder*, 887 F.3d at 743 (explaining that this was not “reimprisonment stemming from her original conviction”). **And the fact that the requirements were part of the sentence didn’t tell us anything about the “in custody” requirement.** *Id.* at 744 (“Whether a registration scheme is punitive for ex post facto purposes leaves unanswered the ‘in custody’ question.”).

71 F.4th at 497–98 (footnote omitted) (emphasis added).

maintains that it’s wrongly decided.⁵ Then he explains that the Third Circuit has reached a “contrary conclusion”⁶ and that the Supreme Court will decide on December 1, 2023 whether to resolve this circuit conflict⁷. Perhaps owing to the death of Retired Associate Justice Sandra Day O’Connor, discussion concerning the petition (for a writ of certiorari) was rescheduled for the Justices’ December 8, 2023 Conference. In the Order List released today,⁸ the United States Supreme Court denied the petition on which Young pinned his hopes. *See Clements v. Florida*, 59 F.4th 1204 (11th Cir. 2023), *cert. denied*, No. 23-107, --- S.Ct. ---, 2023 WL 8531893 (Dec. 11, 2023).

Young’s disagreement aside, the majority opinion in *Hautzenroeder* is binding Sixth Circuit precedent that this district court—sitting in Ohio—must apply. Accordingly, the Court: **ACCEPTS** and **ADOPTS** the Magistrate Judge’s October 10, 2023 Report and Recommendations (Doc. 16), as supplemented (Doc. 20); **OVERRULES** Petitioner’s objections (Docs. 19, 22); and **GRANTS**

⁵ “*Hautzenroeder* overlooks Ohio law that sex registration under the Adam Walsh Act [AWA] is a criminal sanction, imposed at sentencing, that must be included in the judgment. *State v. Halsey*, 12th Dist., 2016-Ohio-7990, ¶13; R.C. 2929.23(B). In that way, it is like a prison term, a probation term, or parole. The Madison Sheriff, then, is enforcing Young’s criminal judgment by requiring his AWA registration duties. That cannot be construed as a collateral consequence because it is a *direct consequence* of the criminal judgment. Young is therefore in custody under § 2254 under Ohio law.” (Doc. 22 PAGEID 718 (emphasis in original)).

⁶ *Piasecki v. Court of Common Pleas, Bucks Cnty., PA*, 917 F.3d 161 (3d Cir. 2019).

⁷ *Clements v. Florida*, 59 F.4th 1204 (11th Cir. 2023), petition for cert. filed, (U.S. Aug. 1, 2023) (No. 23-107).

⁸ See Orders of the Court - Term Year 2023, (Order List: 601 U.S.) Monday, December 11, 2023 (available at https://www.supremecourt.gov/orders/courtorders/121123zor_e29g.pdf).

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Respondent's Motion to Dismiss (Doc. 6) filed pursuant to Fed. R. Civ. P. 12(b)(1). Madison County Sheriff John R. Swaney is hereby dismissed with prejudice from this case.

IT IS SO ORDERED.

s/ Michael R. Barrett

JUDGE MICHAEL R. BARRETT

APPENDIX E

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

DUSTIN YOUNG,

Petitioner, : Case No. 1:23-cv-37

-vs.-

District Judge
Michael R. Barrett

JOHN R. SWANEY,

Respondent. : Magistrate Judge
Michael R. Merz

**REPORT AND RECOMMENDATIONS ON
MOTION TO DISMISS**

This habeas corpus case is before the Court on Respondent's Motion to Dismiss under Fed.R.Civ.P. 12(b)(1) and 12(b)(6)(the "Motion," ECF No. 6). The Motion was filed June 27, 2023, and served on Petitioner's counsel through the CM/ECF filing system. Under S. D. Ohio Civ. R. 7.2, Petitioner's time to file a memorandum in opposition to the Motion expired July 18, 2023, but no opposition has been filed.¹ A motion to dismiss involuntarily is a dispositive motion on which an assigned Magistrate Judge must recommend rather than make a decision.

¹ Petitioner has sought and received several extensions of time to file his Reply/Traverse and filed within the time thus extended. However, (sic)

The grant of power to issue the writ of habeas corpus is found in 28 U.S.C. § 2241 which grants that authority to any federal judge within his or her jurisdiction. Petitioner alleges he is custody of Respondent Sheriff of Madison County, Ohio, by virtue of his conviction in the Butler County Court of Common Pleas on charges of gross sexual imposition and abduction and consequent imposition of registration and reporting duties under the Adam Walsh Act (Petition, ECF No. 1, ¶ 5). Both Butler and Madison Counties are within the Southern District of Ohio². 28 U.S.C. § 115(b). Therefore any Article III judge of this District, including Judge Barrett, has authority to grant the writ as to Petitioner provided other pre-requisites to habeas relief are satisfied.

Although the Court has jurisdiction to issue the writ, Petitioner has sued the wrong Respondent. Petitioner claims he is in custody by virtue of his registration and reporting obligations. Supervision of his compliance with those provisions rests with the Sheriff of his county of residence, Madison County³. However being required to register and report under the Adam Walsh Act does not constitute being “in custody” for purposes of habeas corpus. *Hautzenroeder v. DeWine*, 887 F.3d 737 (6th Cir. 2018). Therefore Respondent Sheriff of Madison County should be dismissed with prejudice as a party to this case.

This case was filed January 17, 2023 (Petition, ECF No. 1). Respondent avers “Petitioner was on community

² Madison County is in the Eastern Division of the District and Butler County is in the Western Division, per 28 U.S.C. § 115(b)(1) and (2). Since the proper Respondent is the Butler County Common Pleas Court, the case is properly venued in the Western Division. S. D. Ohio Civ. R. 82.1. Magistrate Judge Bowman transferred this case to the Western Division pursuant to this Rule. (ECF No. 2).

³ The Civil Cover Sheet lists Petitioner’s residence as being in London, Ohio, which is in Madison County. PageID 5.

control when he filed his Petition. The Butler County Common Pleas Court terminated Young's community control on February 27, 2023." A person who is on probation or parole at the time he files his habeas petition satisfies the custody requirement. *Jones v. Cunningham*, 371 U.S. 236 (1963); *Miskel v. Karnes*, 397 F.3d 446 (6th Cir. 2005); *Tiitsman v. Black*, 536 F.2d 678 (6h Cir. 1976); *United States ex rel Baker v. Finkbeiner*, 551 F.2d 180 (7th Cir. 1977); *United States ex rel. Rybarik v. Maroney*, 406 F.2d 1055 (3rd Cir, 1969). The Court would therefore entertain a motion to substitute the Butler County Court of Common Pleas, made not later than October 23, 2023.

October 10, 2023.