

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

MARCUS L. RICKS,

Petitioner,

v.

CASE NO. 05-3016-SAC

GARY B. KEMPKER, et al.,

Respondents.

O R D E R

This matter is before the court on a petition for habeas corpus filed by a prisoner incarcerated in Missouri and subject to a detainer lodged by Kansas authorities. Petitioner proceeds pro se and submitted the filing fee as directed by the court.

Petitioner filed a motion for leave to amend the petition (Doc. 6) and then a motion to withdraw that motion (Doc. 7). He also seeks the appointment of counsel (Docs. 3 and 8) and has filed a combined motion for a preliminary injunction or temporary restraining order (Doc. 9).

Having examined the record, the court finds a responsive pleading is required to assure the proper evaluation of petitioner's claim concerning the detainer filed by Kansas authorities. The petitioner's motion to withdraw the motion for leave to amend is granted, and the motion for leave to amend shall be terminated from the court's docket.

Generally, the appointment of counsel in a habeas corpus action is left to the court's discretion. Swazo v. Wyoming Dep't. of Corrections State Penitentiary Warden, 23 F.3d 332, 333 (10<sup>th</sup> Cir. 1994). In this case, the court finds that the petitioner is articulate and has prepared detailed pleadings that demonstrate his ability to present his claims clearly. The court finds no compelling basis to appoint counsel at this point in the proceedings and will deny the motions for counsel without prejudice to the renewal of that request upon further development of the record.

Finally, petitioner seeks a preliminary injunction or temporary restraining order due to the filing of a pretransfer writ in the Circuit Court of DeKalb County, Missouri, prior to petitioner's transfer to Kansas authorities pursuant to the detainer. Petitioner contends that if the relief is not granted, he will lose the opportunity to litigate his challenge to the detainer.

Having considered the record, the court will direct the respondents to reply to the motion for a temporary restraining order or preliminary injunctive relief within ten days and will issue an order to show cause concerning the merits of this action.

IT IS THEREFORE ORDERED petitioner's motion to withdraw the motion for leave to amend (Doc. 7) is granted. The clerk of the

court shall terminate the motion for leave to amend the petition (Doc. 6).

IT IS FURTHER ORDERED petitioner's motions for the appointment of counsel (Docs. 3 and 8) are denied.

IT IS FURTHER ORDERED the Attorney General for the State of Kansas is granted ten (10) days to respond to petitioner's motion for a preliminary injunction or temporary restraining order (Doc. 9).

IT IS FURTHER ORDERED:

1. That respondents are hereby required to show cause within twenty (20) days from the date of this order why the writ should not be granted.

2. That the response should present:

- (a) the necessity for an evidentiary hearing on each of the grounds alleged in petitioner's pleading; and
- (b) an analysis of each of said grounds and any cases and supporting documents relied upon by respondents in opposition to the same.

3. Respondents shall cause to be forwarded to this court for examination and review the relevant state court records.

4. That petitioner be granted ten (10) days after receipt by him of a copy of respondents' answer and return to file a traverse thereto, admitting or denying, under oath, all factual allegations therein contained.

5. That the clerk of this court then return this file to

the undersigned judge for such other and further proceedings as may be appropriate; and that the clerk of this court transmit copies of this order to petitioner and to the office of the Attorney General

for the State of Kansas.

**IT IS SO ORDERED.**

DATED: This 25<sup>th</sup> day of April, 2005, at Topeka, Kansas.

S/ Sam A. Crow  
SAM A. CROW  
U.S. Senior District Judge