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February 5, 2025

Scott Harris, Clerk  
Supreme Court of the United States  
1 First St., NE  
Washington, D.C. 20543

Re: Rule 20.3(b) letter in *In re John E. Drummond*, No. 24-6375

Dear Mr. Harris:

Rule 20.3(b) allows respondents in mandamus and prohibition proceedings to “advise the Clerk and all other parties by letter” if they do “not wish to respond to the petition.” The rule does not create an exception for capital cases, and so States may decline to respond even in matters initiated by a death-row inmate. Rule 20.4(b), by comparison, suggests that a response is required when a petitioner seeks a writ of habeas corpus from this Court. *See* Rule 20.4(b) (stating that a response to a petition for a writ of habeas corpus “if ordered, or in a capital case, shall comply fully with Rule 15”).

There are at least two reasons why Rule 20.4(b) does not require Respondent Warden Bill Cool to submit a response in this case. The Warden is therefore submitting this letter in accordance with Rule 20.3(b). If the Court disagrees with the Warden’s interpretation of the applicable rules, the Warden will happily file a brief in opposition to Drummond’s petition.

*First*, the Warden is not the proper respondent in this case. “The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody.” *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 494–95 (1973) A writ of habeas corpus must therefore be directed to an individual’s custodian, that is, it must be directed to the person “with the ability to produce the prisoner’s body before the habeas court.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004); *see also Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 39 (1985).

Drummond’s petition does not seek relief against the Warden; it seeks an order directed to the Sixth Circuit. He asks the Court to order “the [Sixth Circuit] panel” that rejected his petition for a writ of habeas corpus “to re-adjudicate and

revise” the decision that it issued after this Court summarily reversed its earlier decision granting habeas relief. *See* Pet.39. So not only does Drummond fail to seek relief against his custodian, he identifies the wrong party as a respondent. Because Drummond seeks an order directed to the members of the Sixth Circuit panel that rejected his petition for a writ of habeas corpus, it is those members of the Sixth Circuit, not the Warden, that are the proper respondents in this case.

*Second*, Drummond’s petition is not properly characterized as a petition for a writ of habeas corpus. Although Drummond’s pleading purports to be a petition for an original writ of habeas corpus, he does not seek habeas relief. “Habeas lies to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him. Indeed, it has no other power; it cannot revise the state court judgment; it can act only on the body of the petitioner.” *Fay v. Noia*, 372 U.S. 391, 430-31 (1963), abrogated on other grounds by *Coleman v. Thompson*, 501 U.S. 722 (1991); *see also Price v. Johnson*, 334 U.S. 266, 283 (1948) (“The historic and great usage of the writ, regardless of its particular form, is to produce the body of a person before a court for whatever purpose might be essential to the proper disposition of a cause.”).

Drummond’s petition does not ask the Court to order his release, or otherwise “produce” his body. *Id.* He instead asks that the Court order the Sixth Circuit to “reassess[]” and “re-adjudicate and revise” the decision that it issued after this Court summarily reversed an earlier Sixth Circuit decision granting Drummond habeas relief. *See* Pet.3, 24–23, 39. Despite the label that Drummond has attached to his pleading, his petition is therefore not properly characterized as a petition for a writ of habeas corpus, and thus Rule 20.4(b) does not require the Warden to file a response.

Respectfully yours,

Dave Yost  
Attorney General of Ohio

/s/ T. Elliot Gaiser

T. Elliot Gaiser  
Ohio Solicitor General

cc: Alan Rossman, Counsel for John E. Drummond, Petitioner