UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LOUIS MATTHEW CLEMENTS,

Petitioner,

v. Case No. 2:24-cv-294-JES-NPM

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

RESPONSE TO ORDER

COMES NOW Respondent, Secretary, Florida Department of Corrections, by and through the undersigned Assistant Attorney General, and files the instant Response to this Honorable Court's Order of August 15, 2025. (Dkt. 23).

Procedural History

I. CONVICTION AND SENTENCE

On June 14, 2007, the State of Florida charged Petitioner, Louis Matthew Clements ("Clements"), with a single count of lewd and lascivious battery on a person between the ages of 12 and 16 years old. Clements v. State of Florida, No. 2:17-cv-396, DE 51, at 2 (M.D. Fla. July

26, 2021). Clements subsequently pleaded guilty to the lesser offense of lewd and lascivious conduct, in violation of section 800.04(6), Florida Statutes (2007). Id. Pursuant to that agreement, the state circuit court sentenced him to five years of sex-offender probation, the terms of which "provided that he qualified and shall register with the Florida Department of Law Enforcement as a sexual offender pursuant to Fla. Stat. § 943.0435." Clements v. Florida, 59 F.4th 1204, 1207 (11th Cir. 2023) ("Clements I").

II. PRIOR HABEAS PROCEEDING

Nine years later, in 2017, Clements—proceeding *pro se*—sought federal habeas corpus relief from his conviction pursuant to 28 U.S.C. § 2254. This Court dismissed the petition for lack of jurisdiction as Clements' "sentence had fully expired" and his "ongoing requirement to register as a sex offender did not render him 'in custody' for federal habeas corpus purposes." State of Florida, DE 51, at 2. On appeal, the Eleventh Circuit affirmed, holding, "admittedly with some hesitation," that "[t]he restrictions on freedom of movement" imposed by Florida's lifetime registration and reporting requirements were "not severe enough" to place sex offenders "in custody" under § 2254(a). Clements I, 59 F.4th at 1214-16.

For the first time on appeal, Clements argued that Florida's residency restrictions for sex offenders contributed to his being "in custody." Id. at 1208. The Eleventh Circuit declined to consider the impact of those restrictions, however, because Clements had not raised the argument before this Court and the record was thus underdeveloped as to that issue. Id. at 1208–09. Nonetheless, the appellate court expressly reserved consideration of the issue "for another day." Id. at 1208, 1215.

The Supreme Court denied certiorari review. Clements v. Florida, 144 S. Ct. 488 (2023).

III. INSTANT HABEAS PROCEEDING

In April, 2024, Clements filed his second *pro se* § 2254 petition, again challenging the constitutionality of his conviction. (Dkt. 1). Clements' petition included an "Explanation Regarding Lack of Custody," which acknowledged the question left open by Clements I and argued that, because Florida restricted registered sex offenders to "living in only 50% of the State[']s land," this Court should conclude that he was "in custody" for habeas purposes. (Dkt. 1). The Court rendered an order on April 22, 2024, dismissing the petition on the ground that it did not have jurisdiction to consider it. (Dkt. 4).

On July 9, 2025, the Eleventh Circuit vacated that order, concluding the dismissal was premature because the Court did not consider the restrictions on sex offenders' residency when determining that Clements was not in custody when he filed his petition. (Dkt. 21). Clements v. Sec'y, Dep't of Corr., No. 24-11353, 2025 WL 1892401 (11th Cir. July 9, 2025) ("Clements II"). Specifically, the appellate court determined that the parties should have "the opportunity to develop the record as to the restrictions imposed by Florida's sex-offender residency requirements" so that the Court can "rule on whether these residency restrictions, considered in combination with the registration and reporting requirements" render Clements "in custody" for purposes of filing a 28 U.S.C. § 2254 habeas corpus petition. (Dkt. 21 at 7). Clements II, No. 24-11353, 2025 WL 1892401, at *3.

Legal Standards

IV. LEGAL STANDARDS

A. Section 2254's "in custody" requirement

"Since the Founding, Congress has limited the federal courts' power to grant the writ of habeas corpus only to those who are 'in custody.'" Corridore v. Washington, 71 F.4th 491, 494 (6th Cir. 2023) (quoting Judiciary Act of 1789, 1 Stat. 73, 82 (1789)). This holds true today. Under

the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), federal courts have jurisdiction over a habeas petition filed by a state inmate only if the petitioner is "in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(a).

For much of the writ's existence, habeas corpus was available only to those prisoners who were being physically detained. See Wales v. Whitney, 114 U.S. 564, 571–72 (1885) ("[T]o make a case for *habeas corpus* . . . . [t]here must be actual confinement or the present means of enforcing it."). The Supreme Court, however, expanded the reach of the "in custody" requirement in Jones v. Cunningham, 371 U.S. 236 (1963). Under Jones, "what matters" is whether the restrictions in question "significantly restrain [the] petitioner's liberty to do those things which in this country free men are entitled to do." 371 U.S. at 243; see also Hensley v. Mun. Ct., 411 U.S. 345, 351 (1973) ("The custody requirement of the habeas corpus statute is designed to preserve the writ of habeas corpus as a remedy for severe restraints on individual liberty."). The writ is now available, for example, to prisoners released on parole and personal recognizance. Jones, 371 U.S. at 242–43 (parole); Hensley, 411 U.S. at 346, 353 (personal recognizance).

The Supreme Court's precedents finding a severe restraint on

liberty have "rel[ied] heavily on the notion of a *physical* sense of liberty—that is, whether the legal disability in question somehow limits the putative habeas petitioner's movement." Williamson v. Gregoire, 151 F.3d 1180, 1183 (9th Cir. 1998) (emphasis added); see also Jones, 371 U.S. at 242 ("Petitioner is confined by the parole order to a particular community, house, and job at the sufferance of his parole officer."); Hensley, 411 U.S. at 351 (emphasizing that the petitioner "cannot come and go as he pleases" and that his "freedom of movement rests in the hands of state judicial officers, who may demand his presence at any time and without a moment's notice").

Despite this expansion of the meaning of "in custody," the Supreme Court has been clear on its limits: "[O]nce the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual 'in custody' for the purposes of a habeas attack upon it." Maleng v. Cook, 490 U.S. 488, 492 (1989) (providing as examples of collateral consequences the "inability to vote, engage in certain businesses, hold public office, or serve as a juror").

B. Florida's Sex Offender Rules

i. Registration and Reporting Requirements

Under Florida law, sex offenders are subject to registration and reporting requirements for life. § 943.0435(1)(h), (11), Fla. Stat. (2024). Designation as a sex offender, however, "is not a sentence or punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes." Id. § 943.0435(12).

Upon initial registration, sex offenders must provide the State with basic demographic and biographic information, descriptions of "tattoos or other identifying marks," fingerprints, employment information, their physical address, a complete description and tag number of all vehicles owned, telephone numbers, email addresses, and internet profile information for all websites. See §§ 943.0435(2)(b), (3), Fla. Stat. (2024). They must report subsequent changes to their employment, telephone number, email address, or internet identifiers online within 48 hours. Id. § 943.0435(4)(e).

Sex offenders must also report to their local sheriff's office in person two or four times per year, depending on the offense. See § 943.0435(14), Fla. Stat. (2024). Homeless individuals must do so monthly. Id. § 943.0435(4)(b)(2). If an offender plans to travel domestically out of state

for three or more days, they must report in-person 48 hours prior to their departure. Id. § 943.0435. For international travel of five or more days, they must report in person 21 days beforehand. Id. Failure to comply with registration and reporting requirements is a felony, punishable by up to five additional years in prison and a fine of $5,000. Id. § 943.0435(9).

ii. Residency Restrictions

Florida law further prohibits individuals convicted of certain sex offenses, where the victim was less than 16 years of age, from "resid[ing]" within 1,000 feet of any school, child care facility, park, or playground." See § 775.215(2)(a), Fla. Stat. (2024). Said individuals need not relocate, however, where after establishing their residence, changes occur to the surrounding area that render the location noncompliant. Id. § 775.215(1). ("[A] person . . . may not be forced to relocate if . . . a school, child care facility, park, or playground is subsequently established within 1,000 feet of his or her residence."). By definition, a "child care facility" includes "any child care center" or "arrangement" which "provides child care for more than five children unrelated to the operator." Id. §§ 775.215(1)(a), 402.302(2). A "park" is any property specifically designated for recreational use and where children regularly congregate. Id. § 775.215(1)(b). Those areas may be public or private. Id. § 775.215(1).

Violating the residency restrictions is either a felony or misdemeanor. Id. § 775.215(2)(b).

Argument

I. CLEMENTS IS NOT "IN CUSTODY PURSUANT TO THE JUDGMENT OF A STATE COURT."

Clements' newest attempt to demonstrate that he is "in custody" should fail. Whether considered alone or together with Florida's registration and reporting requirements, the residency restrictions amount only to collateral consequences of Clements' long-expired conviction.

Though the Supreme Court has "very liberally construed the 'in custody' requirement," it has also been wary of "stretch[ing]" it "too far." Maleng, 490 U.S. at 491-92. Indeed, the Supreme Court has "never held" that "a habeas petitioner may be 'in custody' under a conviction when the sentence imposed for that conviction has *fully expired* at the time his petition is filed." d. at 491. Instead, the "statutory language . . . requir[es] that the habeas petitioner be 'in custody' under the conviction or sentence [then] under attack[.]" Id. at 490–91. "The negative implication of this holding is, of course, that once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not

themselves sufficient to render an individual 'in custody' for the purposes of a habeas attack upon it." Id. at 492.

Here, Clements' sentence—five years of sex offender probation imposed in 2008—had long since "fully expired" when he filed his petition in 2024. And indeed, in Florida, "it is well-settled that the sexual offender registration requirement . . . is not part of a sentence." State v. Hernandez, 278 So. 3d 845, 849 (Fla. 3d Dist. Ct. App. 2019); see also Fla. Stat. § 943.0435(12) ("The designation of a person as a sexual offender is not a sentence or a punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes."). A ruling that "a petitioner whose sentence has completely expired could nonetheless challenge the conviction for which it was imposed at any time on federal habeas" would "read the [pursuant-to] requirement out of the statute." Maleng, 490 U.S. at 492.

The registration, reporting, and residency requirements were "collateral consequences" of Clements' conviction, which are not themselves "sufficient to render" him "in custody" for purposes of Section 2254. Id. As before, "[t]he proper inquiry here under Jones and its progeny is whether Florida's" registration, reporting, and residency requirements "substantially limit [his] actions or movement." Clements

I, 59 F.4th at 1214. "[T]he 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 corpus relief"; only the Third Circuit has come out the other way. Id. at 1212 (citing cases).

The question is not, of course, whether the registration and reporting requirements, as opposed to the residency requirements, are sufficient to render Clements "in custody"; the Eleventh Circuit held that they are not. Id. at 1217. Rather, the question is whether the residency requirements change the analysis. The answer is no. See Corridore v. Washington, 71 F.4th 491, 496 (6th Cir. 2023) ("[S]ex-offender registration requirements—like not being able to live within 1,000 feet of a school or having to register as a sex-offender—are all collateral consequences of conviction.").

Although Clements I suggests that the appropriate inquiry may be to analyze the "cumulative effect of the restrictions" on Clements' autonomy, 59 F.4th at 1217, at least one circuit has rejected this line of reasoning. In Corridore, the petitioner argued that even if either of the two sex offender regimes to which he was subject was insufficient to render him "in custody," the "combination of the two is." 71 F.4th at 501. The Sixth Circuit disagreed, noting that neither law "encompasse[d]

custodial requirements"; a "series of collateral consequences doesn't equal the 'in custody' requirement because none of the items in that series are severe restraints on the petitioner's liberty." Id.; Gorence v. Eagle Food Ctrs., Inc., 242 F.3d 759, 763 (7th Cir. 2001) ("[I]t is simply not true . . . that if a litigant presents an overload of irrelevant or nonprobative facts, somehow the irrelevancies will add up to relevant evidence . . . They do not; zero plus zero is zero."). In other words, either a restriction—standing alone—is a collateral consequence or it is not, and collateral consequences do not render a petitioner "in custody." Maleng, 490 U.S. at 492.

But taken by themselves or taken together, Clements' status-based requirements do not render him "in custody" because they do not "substantially limit" his "actions or movement" and he is "not required to live in a certain community or home." Clements I, 59 F.4th at 1214, 1215. For example, in Jones, the petitioner was "confined by [a] parole order to a particular community, house, and job at the sufferance of his parole officer," while here Clements' choice of residence is not subject to approval and he is not confined to any particular community within Florida. 371 U.S. at 242. He "can engage in legal activities without prior approval or supervision"; his choice of residence does not "require

permission or approval by state officials." Clements I, 59 F.4th at 1215. In Hensley, the Court emphasized that the petitioner's "freedom of movement rests in the hands of state judicial officers," and that he could not "come and go as he please[d]." 411 U.S. at 351. But Clements is "not at the beck and call of state officials, and those officials cannot 'demand his presence at any time and without a moment's notice.'" Clements I, 59 F.4th at 1215 (quoting Hensley, 411 U.S. at 351). And the restrictions are "less oppressive in terms of personal liberty than the restraints faced by . . . the noncitizens subject to deportation and under supervision in [United States ex rel. Marcello v. Dist. Dir. of INS, 634 F.3d 964, 971 & n.11 (5th Cir. 1981)], and [Romero v. Sec'y, DHS, 20 F.4th 1374, 1379 (11th Cir. 2021)]"—plus, Clements is not under an "order of expulsion from the country or the state" for failing to comply, an "important distinction." Clements I, 59 F.4th at 1214, 1215.[1]

[1] In Clements I, the Eleventh Circuit also considered Smith v. Doe, 538 U.S. 84 (2003), and the same "aspects of the analysis in Smith counsel against a conclusion" that Clements is "in custody" because of the registration, reporting, and residency requirements. 59 F.4th 1216. As in Smith, those requirements do not "restrain activities sex offenders may pursue [and] leaves them free to change jobs or residences." 538 U.S. at 100.

Indeed, the only circuits to have considered whether residency requirements, in conjunction with other sex offender requirements, render an offender "in custody" have agreed: they do not. Hautzenroeder v. DeWine, 887 F.3d 737, 743 (6th Cir. 2018) (residency requirements were "consequences collateral to [the petitioner's] conviction" because she had "not shown that the law operate[d] to confine her to 'a particular community[] [or] house'" or that the requirements "amount[ed] to governmental control over [her] movements" (quoting Jones, 371 U.S. at 242)); Dickey v. Allbaugh, 664 F. App'x 690, 693–94 (10th Cir. 2016) (residency requirements were collateral consequences, as the petitioner "remain[ed] free to live, work, travel, associate, and engage in lawful activities without government approval"); see Munoz v. Smith, 17 F.4th 1237, 1245–46 (9th Cir. 2021) (even residency *approval* requirement was mere collateral consequence). The facts in this case compel a similar result.

Pursuant to this Court's August 15, 2025, order, Clements furnished Respondent a "Final Report Analyzing the Coverage of the Sex Offender Residency Restrictions in Florida," authored by Kelly M. Socia, an associate professor within the School of Criminology and Justice Studies at the University of Massachusetts, Lowell. That report

concludes, in relevant part, that "out of 7,976,448 (non-vacant) parcels that contain at least one residential unit as of 2025, approximately 3,184,375 of these parcels (39.9%) are restricted under [Florida's residency restrictions] due to their proximity to schools (serving children), daycares, or parks. When considering residential units, out of 10,241,987 residential units, approximately 4,702,884 (45.9%) are restricted[.]." Even accepting Socia's findings, Clements may still live in 60.1 percent of residential property and 54.1 percent of pre-existing housing across the state. See Hautzenroeder, 887 F.3d at 743 (analyzing similar 1,000-feet buffer zone restriction and explaining that "[a]lthough petitioner may not be able to make her home in some parts of some neighborhoods, there is no reason to believe that the vast majority of real estate is not open to her). Thus, unlike Jones, he "has not shown that the law operates to confine h[im] to 'a particular community[] [or] house." Hautzenroeder, 887 F.3d at 743 (quoting Jones, 371 U.S. at 242); see also Munoz, 17 F.4th at 1246 ("Almost by definition, this requirement does not require him to live or be anywhere.").

Clements further provided declarations from himself and others[2], attesting to the onerous nature of Florida's registration, reporting, and residency requirements. Although demanding and not "shared by the public generally," Jones, 371 U.S. at 240, said requirements remain collateral consequences. As the First Circuit aptly stated, "even grievous collateral consequences stemming directly from a conviction cannot, without more, transform the absence of custody into the presence of custody for the purpose of habeas review." Lefkowitz v. Fair, 816 F.2d 17, 20 (1st Cir. 1987) (holding that the loss of a medical license did not render a sex offender who had completed his sentence "in custody"). Accordingly, those consequences do not meet the "in-custody" requirement set forth in section 2254(a) to invoke this Court's jurisdiction.

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[2] Those individuals included [redacted], and [redacted]

Conclusion

Based on the foregoing, Florida's sex offender rules do not render Clements "in custody pursuant to the judgment of a State court" under Section 2254. Respondent respectfully requests that this Honorable Court dismiss Clements's Petition for Writ of Habeas Corpus for lack of jurisdiction.

Respectfully submitted,

JAMES UTHMEIER
FLORIDA ATTORNEY GENERAL

/s/ KATIE SALEMI ASHBY
KATIE SALEMI ASHBY
Assistant Attorney General
Florida Bar No. 124837
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813)287-7900
Fax: (813)281-5500
CrimAppTPA@myfloridalegal.com
Katie.Ashby@myfloridalegal.com

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which served opposing counsel Michael B. Kimberly, Esq., and Jared Reed Kessler, Esq., at kimberly@winston.com, jrkessler@winston.com, and ecf_houston@winston.com.

/s/ KATIE SALEMI ASHBY
KATIE SALEMI ASHBY