

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division**

Nelson Ariel Umanzor-Chavez,

Petitioner,

v.

Kristi Noem, *el al.*,

Respondents.

Civ. No. 8:25-cv-01634-SAG

Petitioner's Response to Letter Order of July 10, 2025

On July 10, 2025 (Dkt. No. 11), this Court ordered the parties to brief whether Petitioner's *Accardi*-related procedural issues related to 8 C.F.R. § 241.4(*I*) were raised in his Petition for Writ of Habeas Corpus (Dkt. No. 1); and, if not, whether this Court is still permitted to consider them in deciding whether relief is merited.

Petitioner concedes that the violations of 8 C.F.R. § 241.4(*I*) were not in fact raised in his Petition for Writ of Habeas Corpus. Nonetheless, pursuant to Fed. R. Civ. P. 15(b)(2), the issue was tried to this Court by the parties' express or implied consent, and therefore this court "must" treat it in all respects as if raised in the pleadings.

Under that Rule, Plaintiff need not move to amend his Petition for Writ of Habeas Corpus. Nonetheless, for clarity and for the convenience of the Court and counsel to Respondents, Plaintiff attaches hereto a proposed Amended Petition for Writ of Habeas Corpus (Ex. B hereto) and redline copy (Ex. C hereto), and this Court may choose to accept for filing the Amended Petition and then render judgment thereupon.

Procedural History

Six years after Petitioner was granted withholding of removal under the Convention Against Torture and released him from custody on an Order of Supervision, Respondents took him into detention by surprise and without any forewarning at a regularly scheduled ICE check-in on May 21, 2025. *See* Dkt. Nos. 1-1 (withholding of removal order), 8-2 (Order of Supervision). Petitioner was accompanied to the ICE check-in by his immigration attorney, Amelia Wester. *See* Dkt. No. 1-3 (declaration of Amelia Wester). Ms. Wester was not allowed to accompany Petitioner to the back room where Petitioner was given his paperwork. *Id.* at ¶ 4. The ICE officer told her that Petitioner “was under arrest because they are planning to file a motion to reopen his CAT case with the immigration court. The officer told me that they are not going to deport him to El Salvador right now, and that they are not going to deport him to a third country because of the [*D.V.D. v. DHS*] injunction.” *Id.* at ¶ 5.

Unknown to Ms. Wester, this ICE agent’s statements were inaccurate and misleading, because Petitioner was at that time being served with documentation stating that ICE intended to remove him to Mexico (Dkt. No. 7-1), and a Notice of Revocation of Release (Dkt. No. 7-2) stating that his case was “under current review by the Government of Mexico for issuance of a travel document.”

This habeas corpus petition was filed on a same-day basis, on May 21, 2025 (Dkt. No. 1).

On May 29, 2025, at a status conference before this Court, counsel for Respondents requested an expedited briefing schedule, and the Court ordered Respondents to file their Motion to Dismiss on June 6, 2025; Petitioner would file his opposition on June 16, 2025; and Respondents would file any reply by June 18, 2025. Dkt. No. 6.

On June 6, 2025, Respondents timely filed their Response to Petitioner's Application for Writ of Habeas Corpus, Motion to Dismiss or Stay, and Memo in Support (Dkt. No. 7). Attached to this pleading was a copy of the Notice of Revocation of Release (Dkt. No. 7-2), which is the document that gave rise to the *Accardi* claims. This was the first time that undersigned counsel (or Petitioner's immigration counsel, Amelia Wester) had seen this document.

On June 16, 2025, Petitioner timely filed his Memorandum in Opposition to Motion to Dismiss and Reply Memorandum in Support of Petition for Writ of Habeas Corpus (Dkt. No. 8), raising (for the first time in this litigation) *Accardi* claims about Respondents' violation of 8 C.F.R. § 241.4(l) in the issuance of the Notice of Revocation of Release. *Id.* at 13-17. Counsel for Petitioner did not seek leave under Fed. R. Civ. P. 15(a)(2) to file an Amended Petition pleading these claims; concededly, it would have been better to have done so.

In any event, Respondents chose not to file a reply brief on or before June 18, 2025.

This matter was before the Court on July 9, 2025 for a habeas corpus hearing. *See* Ex. A hereto. Neither before nor during the habeas corpus hearing did Respondents object to the Court hearing the *Accardi* claims related to the Notice of Revocation of Release. To the contrary, Respondents engaged in the argument and responded substantively on both legal and factual grounds. *See* Ex. A at 18-20; 26-27. Respondents even sought leave of Court to file an additional piece of evidence which they considered dispositive of the *Accardi* claims, a request which the Court granted over the objection of Petitioner. Ex. A at 18, 23.

The following day, this Court issued its Letter Order, to which Petitioner replies herein.

Legal Standard

28 U.S.C. § 2242 provides that a habeas corpus petition "may be amended or supplemented as provided in the rules of procedure applicable to civil actions" – in other words, the Federal Rules

of Civil Procedure. *See also* Rules Governing Habeas Corpus Cases Under Section 2254, Rule 12 (stating Federal Rules of Civil Procedure may be applied in a habeas proceeding to the extent not inconsistent with statutory provisions or the Rules Governing Habeas Cases Under 2254).

Pursuant to Fed. R. Civ. P. 15(b)(1), a party may object at trial “that evidence is not within the issues raised in the pleadings,” in which case “the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.”

Where no such objection is made at trial, then Fed. R. Civ. P. 15(b)(2) controls:

When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

Argument

Rule 15(b) “is an exception to the general rules of pleading” that is “designed to allow amendment of a pleading when the facts proven at trial differ from those alleged in the complaint, and thus support a cause of action that the claimant did not plead. Because notice to the defendant of the allegations to be proven is essential to sustaining a cause of action, Rule 15(b) applies only when the defendant has consented to trial of the non-pled factual issues and will not be prejudiced by amendment of the pleadings to include them.” *Gilbane Bldg. Co. v. Fed. Rsrv. Bank of Richmond, Charlotte Branch*, 80 F.3d 895, 901 (4th Cir. 1996).

As the Second Circuit has noted, Rule 15(b)(2) is mandatory and not permissive, and issued tried but not raised in pleadings “must” be treated as if pleaded. *Ostano Commerzanstalt v. Telewide Sys., Inc.*, 880 F.2d 642, 646 (2d Cir. 1989).

Even if this Court were to determine that a habeas corpus hearing is more akin to a summary judgment hearing than a trial, the Fourth Circuit—unlike other circuits—also applies Rule 15(b)(2) at the summary judgment stage. *Feldman v. Pro Football, Inc.*, 419 F. App’x 381, 389 (4th Cir. 2011), citing *People for Ethical Treatment of Animals v. Doughney*, 263 F.3d 359, 367 (4th Cir. 2001).

In this case, at the habeas corpus hearing on July 9, 2025, Respondents did not object to the Court hearing and deciding the *Accardi* claims. *See generally* Ex. A hereto. Had Respondents so objected, this would have permitted Petitioner to request that the pleadings be amended, a request which under Rule 15(b)(1) “should” have been granted by the court absent prejudice to Respondents, which prejudice the rule goes on to explain could have been ameliorated by means of a continuance.

Since no such objection was raised, Rule 15(b)(2) applies to this case. The *Accardi* issues relating to the Release Notification and its compliance with 8 C.F.R. § 241.4(l) were tried with the express or implied consent of Respondents. *See* Transcript, Ex. A hereto, at 18-20. This rises to the level of implied consent, and perhaps even express consent. As one court explained:

Implied consent can be found where the opposing party had a fair opportunity to defend and did not object when the issue was presented and argued. The test for consent is whether the opposing party had a fair opportunity to defend and whether he could have presented additional evidence had he known sooner the substance of the amendment. One sign of implied consent is that issues not raised by the pleadings are presented and argued without proper objection by opposing counsel.

In re Ogbebor, 2013 WL 5376531, at *11 (Bankr. D. Md., Sept. 25, 2013), quoting *In re Prescott*, 805 F.2d 719 (7th Cir. 1986). See also *Teamsters Joint Council No. 83 of the Virginia Pension Fund v. Weidner Realty Assocs.*, 377 F. App'x 339, 343 n.3 (4th Cir. 2010).

Under Rule 15, “[t]he critical focus concerns prejudice to the opposing party.” *Boshea v. Compass Mktg., Inc.*, 2024 WL 3729105, at *12 (D. Md. Aug. 7, 2024). Respondents cannot claim prejudice here. The Court allowed them to file a brief replying to Petitioner’s *Accardi* claims, although they chose not to file such a brief. They fully argued the merits of the *Accardi* claims at the habeas corpus hearing. And the Court granted them leave to file a piece of evidence they consider dispositive of the *Accardi* claims after the habeas corpus hearing, over the objection of Petitioner. Since no prejudice exists, Rule 15 is satisfied.¹

Pursuant to the Rule, Petitioner need not actually file an Amended Petition: “failure to amend does not affect the result of the trial of that issue.” The Fourth Circuit explained, “Even without a formal amendment, ‘a district court may amend the pleadings merely by entering findings on the unpleaded issues.’” *PETA*, 263 F.3d at 367, quoting *Elmore v. Corcoran*, 913 F.2d 170, 172 (4th Cir. 1990). This Court may accordingly issue a writ of habeas corpus and enter judgment for Petitioner without need for an Amended Petition to be filed.

Nonetheless, as 3 Moore’s Federal Practice - Civil § 15.18 explains:

The pleadings do not need to be amended to have the court treat the issues as if they were raised in the pleadings. Failure to amend does not affect the result of the trial of the unpleaded issues. However, an amendment to conform the pleadings will result in having the pleadings mirror the actual issues tried in the case. This is useful in clarifying the record on appeal or in determining the preclusive effects to be given to the judgment. Therefore, a court should be liberal in allowing amendments to the pleadings to conform them to the evidence.

¹ If anything, Petitioner would be the party prejudiced by Respondents’ failure to object at the habeas corpus hearing. Had such an objection been raised, Petitioner could have sought amendment at that time, which the Court “should freely permit[.]” Fed. R. Civ. P. 15(b)(1). Respondents should not be allowed to sit on their objection, and then benefit therefrom.

Accordingly, for the convenience of the Court and Respondents, Petition offers herewith a proposed Amended Petition (Ex. B), as well as a redlined version thereof (Ex. C).

Conclusion

For the foregoing reasons, this Court should find that the *Accardi* issues related to the Notice of Revocation of Release were tried to this Court by the express or implied consent of Respondents, within the meaning of Fed. R. Civ. P. 15(b)(2), and should enter judgment on that claim. While the Court does not need an Amended Petition to be filed in order to enter judgment thereupon, this Court may in its discretion accept the attached Amended Petition for filing, if the court would find it convenient to do so.

Respectfully submitted,

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Date: July 15, 2025

Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

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