UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

POURIA POURHOSSEINHENDABAD	**CIVIL NO: 1:25-cv-00987**
VERSUS	**DISTRICT JUDGE DRELL**
DONALD J. TRUMP, ET AL	**MAGISTRATE JUDGE PEREZ-MONTES**

RESPONDENTS' REPLY TO PETITIONER'S OPPOSITION TO THEIR MOTION TO VACATE TEMPORARY RESTRAINING ORDER AND MOTION TO DISMISS

Respondents submit this brief reply to Petitioner's opposition to Respondents' objection to the court order adopting the report and recommendation (R&R) and granting a temporary restraining order and motion to vacate the TRO, alternative request to file an objection to the report and recommendation, and motion to dismiss as moot.

1. **Motion to Vacate Order Adopting TRO**

Petitioner claims at the outset that because the R&R granting the TRO has been adopted, any objection to the issuance of a TRO is now moot. However, this claim underscores Respondents' legitimate argument that the R&R was adopted prematurely and in contravention of Respondents' statutory and procedural right to object within 14 days prior to the adoption of the R&R pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b). If a premature adoption of an R&R effectively moots any right to object to the resulting order, then why would the rules provide a timeline for objections at all? Moreover, the Respondents' objection is not that the TRO itself does not comport with the District Court's authority to issue such an order. Rather, it is the procedural manner in which the Court adopted the report and recommendation, citing *de novo* review of the record, which is only available if the Respondents have been given the opportunity to file objections. *See Davidson v. Georgia-Pacific, LLC*, 819 F.3d 758 (5th Cir. 2016)(citing 28 U.S.C. § 636(b)(1)(A)).

Next, Petitioner claims that district judges are empowered by Rule 65(b) to issue TROs without written or oral notice, *where* "specific fact in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition". However, a proper reading of Rule 65(b) is that a TRO can issue without notice *only if* certain factors are present which, in addition to the above language, also includes a showing of why notice to the adverse party should not be required. *See* Fed. R. Civ. P. 65(b)(1)((B). Importantly, neither factor for an *ex parte* TRO is met in this case. First, Petitioner filed a habeas petition seeking immediate release and his emergency request for TRO on July 11, 2025, over two weeks after he was initially detained. Next, counsel for Petitioner advised the Court in his motions for TRO and expedited consideration filed on Friday afternoon, July 11, 2025 that he had communicated with the undesigned, and Respondents opposed the motion for TRO. (ECF 3). Next, the undersigned counsel filed a notice of appearance in this matter on Monday morning, July 14, 2025, and began to timely prepare Respondents opposition. But then, on Monday afternoon, the Magistrate Judge issued a report and recommendation to grant the TRO, over three days after the motions were filed and after the Court had notice of both appearance of counsel and Respondents' opposition. Even so, the Court did not order any expedited briefing or give Respondents any opportunity to lodge their objection to the TRO. Instead, after setting the deadline to file objections to the report and recommendation for July 28, 2025, the Court issued its order adopting the R&R and granting the TRO, after the passage of three more days, but before Respondents had filed any objections. Notably, the Petitioner was released from custody on July 16, before the issuance of any court order. Accordingly, under these circumstances, the requirements for an *ex parte* TRO were not met – the TRO did not issue in an emergent manner before Respondents were given notice and the opportunity to oppose. Instead, it issued after

Respondents filed an appearance and indicated their opposition, but without ever communicating anything to Respondents on deadlines to file an opposition aside from the deadlines noted in the report and recommendation in accordance with 28 U.S.C. §636(b) and Fed. R. Civ. P. 72(b). Moreover, the timing of the issuance of the TRO (whether by adoption of the report and recommendation prematurely or by issuance ex parte by the District Judge) is crucial and clearly obviates any alleged immediate and irreparable harm because Petitioner was released *before* the TRO even issued. Therefore, he can hardly show irreparable harm necessitating the issuance of the TRO after he was already released.

Notably, if the Court issued an *ex parte* TRO, the Respondents would likewise have the right to file a motion to dissolve or modify the TRO under Fed. R. Civ. Pro. 65(b)(3). Therefore, if the Court finds merit in Petitioner's argument that, because Rule 65(b)(1) allows for issuance of a TRO without notice in certain circumstances, the Respondents are not entitled to object to the premature adoption of the report and recommendation in this case, (which Respondents avidly oppose), then the Respondents respectfully move to dissolve the TRO under Fed. R. Civ. P. 65(b)(3), as it was moot upon its issuance the day after the Petitioner was released from custody and there could have been no showing of immediate and irreparable harm as required for the TRO under Rule 65(b)(1)(B).

Finally, the Petitioner cites certain cases regarding the standard of review for adoption of a report and recommendation. However, these cases are all clearly distinguishable from the instant case. The cited cases do not address a situation in which the District Court adopted the report and recommendation before the expiration of the 14-day period to file objections. Instead, they address the adoption of the report and recommendation either after objections had been timely filed, or when the 14-day period elapsed without the filing of objections. That is not what happened here,

and those cases are therefore wholly inapposite.[1] Further, the record was not complete because it did not include the opposition of the Respondents which, after the entry of the report and recommendation of the Magistrate Judge, was not due until July 28, 2025 in accordance with the statute governing a magistrate's report and recommendation, the rules of procedure governing a magistrate's report and recommendation, and even the local rules of this Court. Despite Petitiner's argument to the contrary, Rule 73.1 of the Local Rules cannot be applied to supersede the statutory requisites of 28 U.S.C. §636(b).

Accordingly, the Petitioner's opposition wholly misconstrues the basis for the objection and motion to vacate the order adopting the report and recommendation, and this Court should grant Respondents' motion to vacate for the reasons set forth in its original memorandum in support of their objection and motion to vacate. (ECF 10).

2. Motion to Dismiss as Moot

Even though the Petitioner was voluntarily released from ICE custody on July 16, 2025 (the day before the order of release was issued by the Court), the Petitioner opposes dismissal of the habeas petition seeking to assert new claims of alleged civil liberty violations that occurred during ICE's voluntary release of the Petitioner – primarily that he was required to provide

[1] *United States v. Raddatz*, 447 U.S. 667, 676 (1980)(involved a report and recommendation issued by a magistrate after conducting a hearing and hearing testimony from which the magistrate made a credibility determination relied upon by the district judge and cited *Mathew v. Weber*, 423 U.S. 261, 275 for the determination that 28 U.S.C. §636(C) reference to "de novo determination" does not require a de novo *hearing*); *Thomas v. Arn*, 474 U.S. 140, 154 (1985)(determining that Petitioner's failure to file timely objections constituted waiver of appeal rights when notice was provided); *Pittman v. Cooley*, No. 23-cv-2071, 2024 WL 263514, at *1 (E.D.La. Jan. 23, 2024)(noting, *in a case where objections were filed*, that the court is limited plain-error review of any part of the R&R that was not subject to a proper objection). Despite best efforts, the Respondents have been unable to locate any published decision addressing the propriety of premature adoption of a report and recommendation by the District Court before the expiration of the 14-day period to object.

fingerprints while being processed for release from the ICE facility. (ECF 14). Petitioner coins these allegations as a "restraint on Petitioner's liberty" so that he can liken the collection of his fingerprints to a bail condition over which federal courts can retain jurisdiction in certain circumstances, citing two district court decisions from districts outside the Fifth Circuit. (ECF 14). However, these allegations have not been properly pled in the habeas petition and cannot be addressed on the merits in an opposition to Respondent's motion to dismiss as moot. Furthermore, even if the new allegations were properly pled, those claims are not cognizable in habeas. Finally, even if the new claims were cognizable in habeas (which Respondents avidly dispute), Petitioner cannot establish any true violation of a protected civil liberty because he was required to submit to fingerprinting to obtain his initial student visa and regulations allow DHS to collect and use biometric information.

Petitioner alleges that the parties are actively seeking to resolve this issue with Respondents, providing an incomplete chain of correspondence. However, when Petitioner advised that he would not voluntarily dismiss the habeas petition after the Petitioner's release (as he had previously represented that he would), counsel for Respondents noted the arguments raised herein related to these new "concerns". See Exhibits A - C, Email Correspondence between Counsel. Petitioner cannot rely on discussions about the "conditions of release" that are not completely and accurately represented to the Court. More importantly, Petitioner cannot represent a settlement in principle was reached by the parties when that did not occur. Petitioner did represent that he would dismiss the habeas petition upon Petitioner's release. However, ICE released Petitioner because it later dismissed the removal proceedings in immigration court as set forth in the Declaration attached to the motion to dismiss and as represented to Petitioner's counsel, not because it reached a settlement with Petitioner. Furthermore, even if a settlement were reached,

(which is disputed by Respondents) Petitioner has not voluntarily dismissed the habeas petition, and instead is attempting to argue new claims to revive a moot issue.

Petitioner quotes *Rumsfield v. Padilla*, for the proposition that the "in custody" requirement of habeas jurisdiction expands to more than just physical confinement as it relates to Petitioner purportedly having viable claims in habeas despite his release from custody. (ECF 14, p.8). However, the Court in *Rumsfield* reviewed its prior "immediate custody" interpretation of the habeas statute in *Wales v. Whitney*, 114 U.S. 564 (1885), to determine who the proper respondent was in the habeas action. 542 U.S. 426 (2004). This decision was not reviewing whether a "conditions of release" claim extends the "in custody" habeas requirement. The petitioner in that case, Padilla, argued that because the court no longer requires physical detention as a prerequisite to habeas relief, the immediate custodian rule should no longer bind the courts, even in challenges to physical custody. *Id.* at 437. However, the Supreme Court disagreed and stated, "That our understanding of custody has broadened to include restraints short of physical confinement does nothing to undermine the rationale or statutory foundation of *Wales*' immediate custodian rule *where physical custody is at issue*. Indeed, as the cases cited above attest, it has consistently been applied in this core habeas context within the United States." *Rumsfield*, 542 U.S. at 437 (emphasis added).

The claim for relief in the instant case sought Petitioner's immediate release from custody under 28 U.S.C. §2241(c)(3). Section 2241 requires that for a petitioner to file a writ of habeas he must be in custody in violation of the constitution or laws of the United States. The prisoner must be "in custody", but the prisoner must also satisfy the Article III "case and controversy requirements" that the custody itself violates the law in some manner. Otherwise, the matter cannot sound in habeas. *See Maleng v. Cook*, 490 U.S. 488 (1989)(recognizing the 2241(c)(3) custody

requirement as jurisdictional for a habeas claim); *see also Preiser v. Rodriguez*, 411 U.S. 475 (1973)(the essence of habeas corpus is an attack by person in custody on legality of that custody, and traditional function of writ is to secure release from illegal custody); *see also Hernon v. Upton*, 985 F.3d 443 (5th Cir. 2021)(holding that release from custody mooted the habeas corpus petition). Therefore, physical custody is the heart of the habeas claim at issue here, and the Petitioner's newly asserted claims to adjust his definition of "custody" do nothing to undermine either the physical custody or the case in controversy requirement where a writ of habeas is filed under 28 U.S.C. §2241(c)(3) to seek release from custody.

Petitioner's newly asserted claims purportedly related to "conditions of release", akin to "conditions of confinement" are not properly raised in habeas. *See Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997)("[G]enerally, [civil rights suits] are the proper vehicle to attack unconstitutional conditions of confinement and prison procedures. A habeas petition, on the other hand, is the proper vehicle to seek release from custody); *see also Ndudzi v. Perez* (S.D.Tex. Dec. 25, 2020). Regardless, even if these new claims were properly cognizable in habeas (which is disputed), they would still fail on the merits. Petitioner cannot establish any true violation of a protected civil liberty by ICE in collecting his fingerprints because he was required to submit to fingerprinting to obtain his initial student visa in accordance with 8 U.S.C. §§ 1201(b) and 1301. Further, USCIS may collect biometric information for any applicant pursuant to 8 U.S.C. § 103.2(b)(9), which encompasses applications for nonimmigrant status. Therefore, Petitioner has no privacy expectation or liberty interest in preventing the collection of his fingerprints. More importantly, Department of Homeland Security has discretion under the INA to collect and use biometric information for aliens (even those with nonimmigrant status). *See* §103.16(a) ("[a]n individual may be required to submit biometric information by law, regulation. . . DHS may collect

and store for present or future use, by electronic or any other means, the biometric information submitted by any individual"). Petitioner was required by statute to provide fingerprints during the visa application process and may be required by regulation to submit fingerprints to USCIS; therefore, DHS also has discretion to collect and use Petitioner's biometric data, including fingerprints.

Accordingly, the conditions of release claims are not properly brought in habeas and lack merit in any event, and the habeas claims that are properly before the Court are moot and should be dismissed, without prejudice.[2]

CONCLUSION

For these reasons, the Court should grant Respondents' Motion to Vacate the TRO and to dismiss this habeas matter as moot.

Respectfully submitted,

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[2] Because mootness is a jurisdictional issue rather than a decision on the merits, the Respondents do not dispute that dismissal without prejudice is appropriate in these circumstances.