

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

HO NGUYEN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-25-1039-J
	)	
U.S. IMMIGRATION AND	)	
CUSTOMS ENFORCEMENT,	)	
	)	
Respondent.	)	

REPORT AND RECOMMENDATION

Ho Nguyen, who is currently detained by the United States Immigration and Customs Enforcement (ICE), is named as Petitioner in this 28 U.S.C. § 2241 habeas corpus action. (ECF No. 3). A layperson named Madeleine Nguyen, purporting to be Mr. Nguyen's spouse, has filed a letter on behalf of Mr. Nguyen believing her husband's deportation to Vietnam to be imminent and requesting that he not be deported, but instead released and allowed to return to his family. (ECF No. 3).¹ United States District Judge Bernard M. Jones has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B)-(C). The undersigned recommends the Court **DISMISS** this action.

¹ The Court should construe the letter as a petition seeking habeas corpus relief under 28 U.S.C. § 2241. *See Soberanes v. Comfort*, 388 F. 3d 1305, 1308 (10th Cir. 2004) (noting that a challenge to immigration detention is properly asserted as seeking habeas relief under 28 U.S.C. § 2241).

I. MR. NGUYEN HAS NOT SIGNED THE PETITION

Although named as Petitioner, Mr. Nguyen has not signed the petition for writ of habeas corpus. See ECF No. 3. Habeas Corpus Rule 2(c)(5) provides that “the petition must . . . be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.” And Fed. R. Civ. P. 11(a) requires “[e]very pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name—or by a party personally if the party is unrepresented.”

II. MS. NGUYEN HAS NOT ESTABLISHED NEXT FRIEND STANDING

A “next friend” may pursue relief on behalf of a detained person who is unable to seek relief on his own. *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990). But “‘next friend’ standing is by no means granted automatically to whomever seeks to pursue an action on behalf of another.” *Id.* at 163. This is because the next friend doctrine “was not intended” to be available, “as a matter of course,” “[to] intruders or uninvited meddlers, styling themselves next friends.” *Id.* at 164 (internal quotation marks omitted). “Indeed, if there were no restriction on ‘next friend’ standing in federal courts, the litigant asserting only a generalized interest in constitutional governance could circumvent the jurisdictional limits of Art[icle] III simply by assuming the mantle of ‘next friend.’” *Id.*

So, to pursue a case as a next friend, the proposed next friend must show “that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability.” *Id.* at 165; see also *Williams*, 1999 WL

34856, at *5 (“A next friend may not file a petition for a writ of habeas corpus on behalf of a detainee if the detainee himself could file the petition.”); Rule 2(c)(5), Rules Governing Section 2254 Cases in the United States District Courts, advisory committee note to 2004 amendments (“The Committee envisions that the courts would apply [the] . . . ‘next friend’ standing analysis [set forth in *Whitmore*] in deciding whether the signer was actually authorized to sign the petition on behalf of the petitioner.”). The proposed next friend must also demonstrate they are “truly dedicated to the best interests of the person on whose behalf he seeks to litigate” and “have some significant relationship with the real party in interest.” *Whitmore*, 495 U.S. at 163-64. The burden is on the next friend to “clearly establish the propriety of his status and thereby justify the jurisdiction of the court.” *Id.* at 164; *see also Jiron v. Swift*, 671 F. App’x 705, 706 (10th Cir. 2016) (denying certificate of appealability and dismissing appeal of “next friend” who failed to satisfy the *Whitmore* factors for next friend standing); *Williams*, 1999 WL 34856, at *5 (holding that “a next friend applicant must explain why the detainee did not sign and verify the petition, and if he cannot do so, the court is without jurisdiction to consider it” (internal quotation marks omitted)).

Ms. Nguyen does not satisfy the *Whitmore* factors. She does not assert, much less demonstrate, that Mr. Nguyen is unable to litigate his own case due to mental incapacity, or lack of access to the courts. And neither Mr. Nguyen’s incarcerated status nor the alleged complexity of the legal issues provides this proof. *See, e.g., Jiron*, 671 F. App’x at 706 (rejecting father’s attempt to act as next friend when he failed to show how his

daughter's incarceration and failure to receive certain documents from the district court "interfered with her ability to communicate with the district court").

III. MS. NGUYEN IS NOT AN ATTORNEY

Ms. Nguyen prepared the letter/Petition and is attempting to pursue this case on Mr. Ngyuen's behalf. (ECF No. 3). But Ms. Nguyen is not an attorney and so she cannot represent Mr. Nguyen or file documents on his behalf. *See, e.g., Williams*, 1999 WL 34856, at *5 ("Since Mr. Shaffer does not qualify as a 'next friend,' as a lay person he may not participate in the unauthorized practice of law by filing petitions and briefs on behalf of another in violation of state and federal provisions governing the practice of law."). The Court may also dismiss the petition on this basis. *See id.* (holding the petitioner was "not entitled to have an unlicensed lay person 'represent' him in . . . the district court").

IV. SUMMARY

Mr. Nguyen did not sign the letter/Petition and Ms. Nguyen has not shown she was authorized to sign the petition on Mr. Nguyen's behalf or that she is an attorney representing Mr. Nguyen. As a result, the Court should dismiss the Petition, as the Court is without jurisdiction to consider it. *Williams*, 1999 WL 34856, at *5.

V. RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

Based upon the foregoing, the Court should dismiss the Petition (ECF No. 3). Mr. Nguyen may file an objection to this Report and Recommendation with the Clerk of this Court by **October 24, 2025**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72.

Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

VI. STATUS OF REFERRAL

This Report and Recommendation terminates the referral by the District Judge in this matter.

ENTERED on October 7, 2025.

A handwritten signature in black ink, reading "Shon T. Erwin". The signature is written in a cursive, flowing style. The first name "Shon" is written with a large, looped 'S'. The middle initial "T." is written with a small 'T' followed by a period. The last name "Erwin" is written with a large 'E' and a trailing flourish.

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE