

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

MOHAMMAD MOMENNIA,
Petitioner,

v.

PAMELA BONDI, ET AL.,
Respondents.

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Case No. CIV-25-1067-J

RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION

NOW COME Respondents Attorney General Pamela Bondi; Secretary of Homeland Security Kristi Noem; U.S. Department of Homeland Security (DHS); U.S. Immigration and Customs Enforcement (ICE); Todd M. Lyons, Acting Director of ICE; Marcos Charles, Acting Executive Associate Director, Enforcement and Removal Operations (ERO); and Peter Berg, ICE Field Office Director, Fort Snelling, Minnesota (collectively the "Federal Respondents"),¹ who object to Magistrate Judge Amanda L. Maxfield's Report and Recommendation (R&R) [Doc. 18] insofar as it recommends that Petitioner Mohammad Momennia be granted habeas corpus relief under 28 U.S.C. § 2241. The Federal Respondents do not object to Judge Maxfield's recommendation that certain motions and requests for injunctive and declaratory relief be denied. *See* R&R [Doc. 18] at 22. In support of their objection, the Federal Respondents submit the following:

¹ The undersigned has not entered an appearance on behalf of Scarlet Grant, who is "sued in her official capacity as the Warden of the Cimarron Correctional Facility." Petition [Doc. 1] at 7, ¶ 34. CoreCivic, Inc., is the owner/operator of the Cimarron Correctional Facility and is Warden Grant's employer. Petitioner's claims against Warden Grant are derivative of his claims against the Federal Respondents, and a response from Warden Grant is not necessary to address Petitioner's demand for habeas corpus relief.

Brief in Support of Objection

I. The Federal Respondents re-assert the arguments from their response.

The Federal Respondents re-assert and adopt by reference all arguments presented in their Response in Opposition to Petitioner's Verified Petition for Writ of Habeas Corpus [Doc. 14] and assert their right to appellate review of all arguments presented therein.

Specifically, the Federal Respondents submit that, contrary to Judge Maxfield's finding that "Mr. Momennia has met his burden," R&R [Doc. 18] at 18, Petitioner has not satisfied his initial burden of showing no significant likelihood of removal in the reasonably foreseeable future such that evidence to rebut that showing must be presented. *See* Response [Doc. 14] at 14 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)).

The Federal Respondents further submit that Petitioner's claims collateral to his demand for habeas corpus relief under *Zadvydas* should be denied. *See* Response [Doc. 14] at 21. Petitioner has effectively conceded that his claim against Respondent Peter Berg is improper,² and he has submitted in reply, "[T]he Court realistically need not reach the question of whether Petitioner's constitutional rights were violated." Reply [Doc. 15] at 4.

II. The R&R finds that ICE violated 8 C.F.R. §§ 241.4 and 241.13, but Petitioner does not allege such a violation, and ICE reviewed Petitioner's custody.

A habeas corpus petition must "specify all the grounds for relief available to the petitioner" and must "state the facts supporting each ground[.]" Rule 2(c)(1)-(2), Rules

² Compare Response [Doc. 14] at 21 (arguing that no plausible allegation of fact shows that Mr. Berg is responsible for Petitioner's detention or otherwise links Mr. Berg to the case) with Reply [Doc. 15] at 5, n. 1 (stating that Mr. Berg was "incorrectly listed...on the face of the verified petition" and that designating him as a party was simply a "typographic error" and "irrelevant").

Governing Section 2254 Cases.³ A litigant must carry the burden that the law assigns to him, and one who is represented by counsel is bound by the actions (or inactions) and choices of his counsel. *Smith v. McCord*, 707 F.3d 1161, 1162 (10th Cir. 2013). Even a *pro se* party requires no special legal training to recount the facts surrounding his claim and must plead such facts to state a claim upon which relief can be granted. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

As observed by Judge Maxfield, a removable alien in detention is “entitled to certain review procedures...at certain intervals.” R&R [Doc. 18] at 10. A records review and interview ordinarily will occur within approximately three months after revocation of an alien’s supervised release. *Id.* (citing and quoting 8 C.F.R. § 241.4(l)(3)).

Neither Mr. Momennia nor Respondents alleges whether he received the informal interview or whether the requirements of the custody review process have been met within the three months after the revocation of release on March 28, 2025 (*i.e.*, by June 26, 2025), or following.

Id.

Although neither side alleges whether Petitioner received the § 241.4 custody review,⁴ and “it is mostly unclear from the record before the Court whether or to what extent ICE has followed any of its own regulatory procedures in this matter,” Judge

³ The Court is applying the Rules Governing Section 2254 Cases in this case. *See* Order [Doc. 9] at 1, ¶ 1 and n. 1 (directing Respondents to file an answer, motion, or other response consistent with Rule 5 of the Rules Governing Section 2254 Cases and explaining that the Court may apply those rules to habeas petitions arising under 28 U.S.C. § 2241).

⁴ The closest to an allegation by Petitioner regarding that process that the Federal Respondents can discern is the following: “If a noncitizen is not released following the informal interview, ‘the provisions of [8 C.F.R. § 241.4] shall govern the alien’s continued detention pending removal.’ 8 C.F.R. § 241.13(i)(2).” Petition [Doc. 1] at 14.

Maxfield concludes, “ICE should have initiated a custody review determination under § 241.4 within approximately three months after his revocation.” *Id.* at 13. That, in turn, would trigger a likelihood-of-removability evaluation under § 241.13. *Id.*

It was not the Federal Respondents’ burden to address in their Response [Doc. 14] issues that were not raised by Mr. Momennia in his Verified Petition for Writ of Habeas Corpus [Doc. 1]. Yet Judge Maxfield’s discussion of the custody-review process under §§ 241.4 and 241.13 appears within the framework, “ICE Has Violated Its Own Regulations By Continuing To Detain Mr. Momennia.” R&R [Doc. 18] at 7 (text effects removed).

Judge Maxfield concludes, “Based on ICE’s violations of its own regulations, the undersigned concludes that Mr. Momennia’s detention is unlawful and that his release is appropriate under 28 U.S.C. § 2241(c)(3).” *Id.* at 17. The R&R finds a regulatory violation that Petitioner has not plausibly alleged. The Federal Respondents cannot be faulted for failing to address an issue that Petitioner has not raised.

Mr. Momennia is not a *pro se* party. He is represented by an attorney who is a member in good standing of the bars of the State of Minnesota; the United States Supreme Court; the United States Courts of Appeals for the Second, Fifth, Sixth, Eighth, Ninth, and Eleventh Circuits; and the United States District Courts for the Districts of Minnesota, Western Wisconsin, Eastern Missouri, and North Dakota. Petitioner’s counsel may be a member of the bars of other jurisdictions. *See* Request for Admission Pro Hac Vice [Doc. 7] at 1, ¶ 4 (listing the foregoing jurisdictions with the representation, “Not sure if this is all of them....”). As of October 21, 2025, Petitioner’s attorney is counsel in six other

immigration cases pending in this Court. He is an experienced immigration practitioner.⁵ If Petitioner believed there was a violation of the review process, then Petitioner, through his counsel, could have alleged it.

Moreover, ICE has conducted regulatory review of Petitioner's detention. In June 2025, ICE issued a letter to Petitioner informing him that his custody status had been reviewed and that ICE had determined not to release him from custody at that time. The decision was made based on a consideration of Petitioner's file, any information Petitioner submitted to ICE's reviewing officials, and the factors set forth in 8 C.F.R. § 241.4(e), (f), and (g). Att. 1.⁶

On September 15, 2025, Petitioner, through counsel, submitted his 23-page Verified

⁵ A CourtLink search of immigration dockets indicates that Nicholas Ratkowski is counsel in 35 immigration cases, primarily in the District of Minnesota. The CourtLink search did not yield the cases pending in this Court. Petitioner's counsel also handles administrative matters before the Board of Immigration Appeals. See Request for Admission Pro Hac Vice [Doc. 7] at 4, ¶ 4.

⁶ The Federal Respondents acknowledge that ICE's "Decision to Continue Detention" letter was not presented to Magistrate Judge Maxfield for her consideration, and that typically a party may not present an issue for the first time in its objection to a magistrate judge's report. *Rocha v. Price*, 51 F.3d 286, 1995 WL 143116, at *2 (10th Cir. 1995) (unpublished); see also *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived."); *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985, 990-91 (1st Cir. 1988) ("[A]n unsuccessful party is not entitled as of right to de novo review by the judge of an argument never seasonably raised before the magistrate."); *Marr v. Foy*, No. 1:07-CV-908, 2010 WL 489535, at *6 (W.D. Mich. Feb. 4, 2010) ("[A] party may not raise an argument, advance a theory, or marshal evidence before a District Judge that was not fairly presented to the Magistrate Judge."). However, this is not a case where a party withheld evidence then waited until after the R&R was issued to present it. Mr. Momennia's Petition [Doc. 1] cannot be fairly read to allege denial of the 90-day regulatory review, so the Federal Respondents did not submit the "Decision to Continue Detention" letter with their Response [Doc. 14].

Petition [Doc. 1], to which he attached a 5-page exhibit [Doc. 1-1]. The allegations of his petition are set out in 99 numbered paragraphs followed by a 14-paragraph prayer for relief. If there was an issue with the custody-review process under §§ 241.4 and 241.13, it is not alleged, but it was Petitioner's burden to allege it specifically.

III. The R&R's *Zadvydas* analysis improperly relies on events from 2004 and a claim that is not supported by plausible allegations of fact.

The R&R finds that "in addition to ICE's regulatory violations," Mr. Momennia's detention cannot continue in light of *Zadvydas*. R&R [Doc. 18] at 17. Judge Maxfield finds that institutional barriers to repatriation and obstacles particular to Petitioner's removal are present, thereby satisfying his initial burden of pleading under *Zadvydas*:

- "First, Iran has previously denied Mr. Momennia's request for travel documents when he requested them, explaining that he is listed as deceased in their systems." *Id.* at 19-20 (citing Petition [Doc. 1] at 2-3).
- "Second, Mr. Momennia states that he was 'told by multiple ICE agents that the agency has already tried to effect permission for third-country deportations but [has been] unsuccessful.'" *Id.* at 20 (citing Petition [Doc. 1] at 3).

The R&R's *Zadvydas* analysis misses the mark. First, Iran previously denied the request for travel documents *in 2004*, and it was then that Mr. Momennia "was told his name shows up as belonging to a deceased person in Iran's system." Petition [Doc. 1] at 2-3, ¶ 9; *see also* Att. 2 [Doc. 14-2] at 2, ¶ 5 ("On March 18, 2004, Petitioner was released on an order of supervision because ERO had been unable to obtain travel documents from the government of Iran.").

The proper focus is on the current likelihood of removal, not a request for documents made over two decades ago. "The question is, as of *this moment* and given the current

circumstances, whether Petitioner is likely to be removed in the reasonably foreseeable future or whether he is not.” *Meskini v. Att’y Gen. of United States*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018) (emphasis in the original).

ERO intends to remove Mr. Momennia either to Iran or to a third country. Att. 2 [Doc. 14-2] at 2, ¶ 6. Removal to the Islamic Republic of Iran is hindered by the bureaucratic inefficiencies of its government, but the reasonableness of a detention pending deportation “cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals.” *Head v. Keisler*, No. CIV-07-402-F, 2007 WL 4208709, at *4 (W.D. Okla. Nov. 26, 2007) (quoting *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)). The Federal Respondents are not responsible for the bureaucratic inefficiencies of a foreign country. “To conclude that a deportable alien who hails from such a country must be released from detention, with the likely consequence of flight from American authorities back into the hinterlands, simply because his native country is moving slow, would mean that the United States would have effectively ceded its immigration policy to those other countries.” *Fahim*, 227 F. Supp. 2d at 1367.

The present reality is that, given Iran’s bureaucratic obstacles, “ERO’s Headquarters Office is currently working on removing Momennia to a third country.” Att. 2 [Doc. 14-2] at 2, ¶ 8. The State Department, DHS, and ICE are working together on a third-country removal. Att. 4 [Doc. 14-4] at 2, ¶ 4. Removal is likely in the reasonably foreseeable future.

Second, the R&R’s *Zadvydas* analysis gives far too much weight to what “Mr. Momennia states that he was ‘told by multiple ICE agents....’” R&R [Doc. 18] at 20

(quoting Petition [Doc. 1] at 3). A complaint should answer basic questions necessary for the presiding court and the party-opponent to understand the nature of the claim, such as the who, what, where, and when of the circumstances at issue. *Scotto v. The Comm'n*, No. CV 23-2870 (RK) (DEA), 2024 WL 866350, at *1 (D.N.J. Feb. 29, 2024), *appeal dismissed*, No. 24-1418, 2024 WL 5453322 (3d Cir. Oct. 10, 2024); *Young v. Dinesen*, No. CV 21-0249 PJM, 2021 WL 3883880, at *1 (D. Md. Aug. 31, 2021).

Who were the “multiple ICE agents” who purportedly told Mr. Momennia that ICE had “already tried to effect permission for third-country deportations,” the “same ICE agents” who purportedly “told Momennia that they will keep him detained for as long as they wish”? Petition [Doc. 1] at 3, ¶ 10. If Petitioner cannot identify them by name, what position or rank did they hold?

When did the multiple ICE agents make those statements, and under what circumstances? On what authority did the multiple agents purport to speak for ICE and DHS? Did the persons who made such statements actually work for ICE, or were they employed by CoreCivic, Inc., at the Cimarron Correctional Facility?

In contrast to Petitioner’s vague claims about what “multiple” ICE agents supposedly told him, the Federal Respondents have presented sworn declarations of a Deportation Officer and a Deportation and Detention Officer attesting that ERO, ICE, and DHS are working with the State Department to remove Mr. Momennia to a third country. Response Att. 2 [Doc. 14-2] at 2, ¶ 8; Response Att. 4 [Doc. 14-4] at 2, ¶ 4.

Under the plausibility standard, the Court is required to resolve *reasonable* inferences in Petitioner’s favor, a point conceded by the Federal Respondents in their

original filing. *See* Response [Doc. 14] at 10, n. 2 (citing *Diversey v. Schmidly*, 738 F.3d 1196, 1199 (10th Cir. 2013)). The R&R goes far beyond that, accepting at face value the hearsay pronouncements of a habeas corpus petitioner who stands convicted of *crimen falsi* crimes.⁷ The federal pleading standard may not “require ‘detailed factual allegations,’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)), but it certainly requires more than what Mr. Momennia pleads here.

IV. Immediate release, the remedy suggested by the R&R, is not appropriate.

A habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure the alien’s removal. “It should measure reasonableness primarily in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699.

Without abdicating responsibility to determine the lawfulness of an alien’s continued detention, judicial review under *Zadvydas* “must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive” efforts to enforce the INA, “and the Nation’s need to ‘speak with one voice’ in immigration matters.” *Id.* at

⁷ In addition to the firearms offense that led to his removal proceedings, Mr. Momennia has been convicted of making a false and fraudulent claim for insurance and obtaining money by false pretenses (insurance fraud). Att. 1 [Doc. 14-1]; *compare with Momennia v. I.N.S.*, 215 F.3d 1337, 2000 WL 719473, at *1 (10th Cir. 2000) (table op.) (“On March 11, 1993, appellant was convicted in Oklahoma state court of second degree robbery, assault and battery, and pointing a firearm. Appellant completed his Oklahoma sentence in September 1995. [¶] The Immigration and Naturalization Service (INS) instituted removal proceedings against appellant on June 7, 1995. The basis for removal was appellant’s conviction of the Oklahoma firearms offense.”).

700. Courts must give executive agencies “decisionmaking leeway in matters that invoke their expertise” and must “recognize Executive Branch primacy in foreign policy matters.” *Id.*

“[C]ourts must ‘listen with care when the Government’s foreign policy judgments, including ... the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.’” *Nguyen v. Noem*, --- F.Supp.3d ---, 2025 WL 2737803, at *3 (N.D. Tex. Aug. 10, 2025) (quoting *Zadvydas*, 533 U.S. at 700) (alterations by the district court). A presumption of regularity attaches to the acts and judgments of immigration officials. *Id.* at *5. Habeas corpus offers relief from unlawful imprisonment or custody; is not a mechanism for courts to order the fulfillment of administrative requirements or to direct release on that basis. *Id.* at *7.

Turning to the case at bar, ICE is working on removing Petitioner to a third country, and it is worth noting that during its custody review, ICE informed Petitioner that it had determined to maintain custody over him not only because removal is expected to be effected within the reasonably foreseeable future but also because Petitioner was deemed a threat to public safety. Att. 1 at 1. He was convicted in 1993 of second-degree robbery, assault and battery, and pointing a firearm. *Momennia v. I.N.S.*, 215 F.3d 1337, 2000 WL 719473, at *1 (10th Cir. 2000). In 1994, he was convicted of the felonies of false claim for insurance and obtaining money under false pretenses. Response Att. 1 [Doc. 14-1].

As this Court has recognized, bureaucratic delays almost always attend removals, and delay alone does not trigger the inference that an alien will not be removed in the reasonably foreseeable future. *Head*, 2007 WL 4208709, at *4. There is no absolute reason

for the Court to order immediate release in this case. The Court may instead deny the petition without prejudice to refiling if travel documents have not been issued in three months or within another, similarly reasonable period as determined by the Court.

Prayer for Relief

WHEREFORE, the Federal Respondents respectfully pray for an order or orders of this Honorable Court refusing to adopt the Report and Recommendation [Doc. 18], denying Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction [Doc. 3], denying Petitioner's Verified Petition for Writ of Habeas Corpus [Doc. 1], and dismissing the action without prejudice to refiling.

Respectfully submitted this 22nd day of October, 2025.

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Index of Attachments

Att. 1 ICE Decision to Continue Detention letter I/C/O Momennia, Mohammad Rankouhi (June 30, 2025)