

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

██████ N ██████ Y ██████ VALLE,)
Petitioner,)
)
v.)
)
DON JONES, WARDEN, KAY)
COUNTY DETENTION CENTER,)
ET AL.,)
Respondents.)

Case No. CIV-25-1161-J

**FEDERAL RESPONDENTS' OBJECTION
TO REPORT AND RECOMMENDATION**

NOW COME Respondents Russell Holt, Director, Chicago Field Office, U.S. Immigration and Customs Enforcement (ICE); Kristi Noem, United States Secretary of Homeland Security; and Pamela Bondi, Attorney General of the United States (collectively the “Federal Respondents”) who present the following matters in objection to the Report and Recommendation (R&R) [Doc. 15]:

A requirement that one must file objections to a magistrate judge’s report “is supported by sound considerations of judicial economy,” enabling the district judge “to focus attention on those issues—factual and legal—that are at the heart of the parties’ dispute.” *Thomas v. Arn*, 474 U.S. 140, 147 (1985). Courts in the Tenth Circuit ordinarily decline to consider legal arguments not raised in an objection to a magistrate judge’s report and recommendation. *Greer v. Dowling*, 947 F.3d 1297, 1303 (10th Cir. 2020) (citing *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005)). Subject to limited exceptions, a party who fails to make timely objections to a magistrate judge’s findings and recommendations waives review of both factual and legal questions. The “firm waiver

rule” applies when a party fails to object to the findings and recommendations of the magistrate judge, but the rule does not apply when the interests of justice require review. *Morales-Fernandez*, 418 F.3d at 1119 (citing *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)); *Duffield v. Jackson*, 545 F.3d 1234, 1237 (10th Cir. 2008).¹

For objection to the R&R [Doc. 15], the Federal Respondents first re-assert, adopt by reference, and do not waive the arguments they presented in their Response to Petition for Writ of Habeas Corpus [Doc. 11]. Further objecting, the Federal Respondents note the following matters asserted in the declaration of an ICE deportation officer:

1. There is a final order of removal, and DHS/ICE believed when it took Petitioner back into custody on February 24, 2025, “that Mexico was accepting citizens of [REDACTED] with final orders of removal.” Response Att. 1 [Doc. 11-1] at 3, ¶ 13.

– and –

2. Petitioner is scheduled for an immigration court hearing on December 9, 2025, at which time the immigration court will determine if Petitioner can establish eligibility for withholding of removal to any country to which ICE’s Enforcement and Removal Operations (ERO) intends to remove him. *Id.* at 3, ¶ 15.

Nine months after Petitioner’s return to immigration custody, the Federal Respondents have no evidence to dispute his assertion that he has “cognitive and intellectual disabilities.” Petition [Doc. 1] at 2, ¶ 1; at 5, ¶ 12; and at 6, ¶ 17. Nor can the Federal Respondents object to the Magistrate Judge’s assessment, “Mr. Valle is a middle-aged man with cognitive and intellectual disabilities[.]” R&R [Doc. 15] at 1; *see also*

¹ Another exception to the “firm waiver rule” arises when a pro se litigant has not been informed of the deadline for objecting and the consequences of a failure to object. *Morales-Fernandez*, 418 F.3d at 1119. Petitioner and the Federal Respondents are represented, the R&R advises the parties of their right to object, and it informs the parties of the consequences of a failure to object. R&R [Doc. 15] at 13.

Petition [Doc. 1] at 7, ¶ 23 (“At a hearing on November 2, 2017, an IJ determined that ██████ was mentally incompetent and granted safeguards.”) and Response to Petition [Doc. 11] at 1 (“Petitioner ██████ n ██████ y ██████ Valle is a ██████ man with cognitive and intellectual disabilities.”) (quoting Petition [Doc. 1] at 2, ¶ 1, and at 5, ¶ 12).

The Federal Respondents have presented evidence that during an administrative immigration process, “█████ A ██████ asserted a fear of returning to ██████” and “[o]n or about April 2012, it was determined that ██████ A ██████ had a reasonable fear of returning to ██████” Response Att. 1 [Doc. 11-1] at 2, ¶¶ 9-10.

Accordingly, the Federal Respondents urge the Court, in accordance with Federal Rule of Civil Procedure 17(c), to review *de novo* the question whether the interests of Petitioner, who is not represented herein by a next friend or guardian, are adequately protected.

Petitioner asks this Court to grant him a writ of habeas corpus when he has not exhausted his available remedies in the immigration court. Given that an administrative hearing is set for December 9, 2025, the Federal Respondents assert that there is significant likelihood of removal to Mexico or another country in the reasonably foreseeable future. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

Respectfully submitted this 2nd day of December, 2025.

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