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

Wei Zhang,

Petitioner

v.

Pamela Bondi, Attorney General; et al.,

Respondents.

Case No.: 25-CV-1301-PRW

PETITIONER'S RESPONSE TO RESPONDENTS' MOTION TO STRIKE (ECF NO. 14)

INTRODUCTION

Petitioner, Wei Zhang, filed a petition for a writ of habeas corpus on November 3, 2025 alleging that he is being detained in violation of law. ECF No. 1. On November 6, 2025, the Court issued an Order to Show Cause ("OSC") ordering Respondents to state the true cause of Petitioner's detention by November 20, 2025. ECF No. 10. Respondents filed their opposition response to the habeas petition on November 20, 2025, explaining why, in their view, Petitioner is lawfully detained. *See* ECF Nos. 12, 12-1, 12-2, 12-3, 12-4, 12-5, 12-6, 12-7. Petitioner filed his reply on November 22, 2025.

On November 24, 2025, Respondents filed a motion to strike Petitioner's reply. ECF No. 14. Respondents apparently believe that striking the reply of a detained individual who is alleging custody in violation of law and the Constitution is the proper remedy for alleged noncompliance with Local Civil Rule 7.1(h). This is quite a position to take, considering Respondents' argument that "[r]egulatory compliance is at most harmless error." *See* ECF No. 12 at 19-20 (using court-stamped page numbers at top of

page). Respondents have not explained how Petitioner's noncompliance harmed them. *See* ECF No. 14.

Respondents also allege that Petitioner has improperly accused Respondents of ignoring a deadline set by the Court based on an obvious typographical error in Petitioner's reply. *See* ECF No. 14 at 3-4. Though it hardly needs to be stated, Petitioner did not intend to accuse Respondents of filing an untimely response; instead, Petitioner's counsel accidentally failed to change a "4" to a "20." In the reply, Petitioner correctly stated that the OSC issued on November 6, which shows that submission of the response by November 4 would have been impossible. The government's attempt to gain a litigation advantage—by silencing a detained individual who is credibly and persuasively alleging constitutional violations bearing on his liberty—from an obvious and immaterial typo is surprising.

Respondents' motion to strike must be denied for the following reasons.

ARGUMENT

Respondents filed their opposition response to Petitioner's request for a writ of habeas corpus on November 20, 2025. ECF No. 12. Respondents specifically titled that document, "RESPONSE IN OPPOSITION TO PETITIONER'S VERIFIED **PETITION FOR WRIT OF HABEAS CORPUS**." ECF No. 12 at 1. Respondents did not indicate in the title of their filing that this was a response to a motion. Instead, it is more in line with an oppositional Answer to the petition. Respondents did not label the document as a "brief" either, which may have put counsel on notice that the filed reply might possibly be considered a reply "brief" rather than a "reply" to the opposition response relating to

the habeas corpus petition. Keeping with this theme, Petitioner titled his reply, "PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO VERIFIED **PETITION FOR HABEAS CORPUS**." ECF No. 13 at 1 (underline added).

Petitioner notes that the OSC that was issued in this case ordered Respondents to file "an answer, motion or other response" within 14 days "consistent with Rule 5(b), (d) of the Rules Governing Section 2254 Cases." ECF No. 10 at 1.

Rule 5(b) of the Rules Governing Section 2254 Cases refers to the response as "[t]he answer," setting no arbitrary page limit. Rule 5(d) also fails to set any sort of arbitrary page limit for the response.

Rule 5(e) of the Rules Governing Section 2254 Cases provides:

> The petitioner may file a reply to the respondent's answer or other pleading. The judge must set the time to file unless the time is already set by local rule.

Rules Governing Section 2254 Cases R. 5(e). Rule 5(e) sets no arbitrary page limit for a reply, nor does it classify the reply as a motion subject to local rules governing the length of a motion reply. *See id.* Moreover, if one looks at the reply Petitioner filed, it focuses exclusively on the merits of the habeas petition and makes no arguments relating to the previously requested motions for injunctive relief, further indicating that LCvR7.1(h) does not apply to Petitioner's reply. Had Petitioner been aware that there was even a remote possibility that LCvR7.1(h) might arguably apply to Petitioner's reply, the undersigned would have filed a motion for leave to file an overlength brief and that request would have likely been granted considering the extraordinarily important liberty issues at stake in this

case.[1] Moreover, considering the reply was filed well before the due date, it is plain that such a motion could have been timely filed if there was any reason for the undersigned to believe that such conduct was necessary or proper. Indeed, in the numerous other cases where Petitioner has filed replies to habeas responses in this district, not once (until today, *supra* n.1) has the undersigned encountered any credible indication that the reply must be limited to 10 pages.

Additionally, the OSC states that "[i]f Respondents file an answer or other response, Petitioner **shall** file a reply within **fourteen... days** from the filing date," and then sets forth different albeit similar rules for a motion response, further indicating that the nature of the reply depends on the nature of the response. *See* ECF No. 10 at 2 (emphasis added). Considering the OSC requires Petitioner to file a reply to an answer or other response within 14 days, whereas LcVR7.1(h) provides that [r]eply briefs are optional and not encouraged," and further provides a time limitation of 7 days to file a reply to a motion, it follows that LcVR7.1(h) does not apply to the type of reply that Petitioner filed in this matter.

Respondents have provided no good cause for striking Petitioner's reply. Petitioner used exactly as many pages as was necessary to respond to the government's response and

[1] The undersigned received such an indication for the first time earlier today in *Jin v. Bondi*, No. 25-CV-01232-JD (W.D. Okla. Nov. 24, 2025), ECF No. 18 (R&R) at 2 n.2. In that case Magistrate Erwin denied a similar motion to strike and stated, "Petitioner's counsel is reminded of his obligation to comply with LCvR7.1 regarding the length of briefs and requests for leave to file oversized briefs." The undersigned will amend his practice in light of that footnote, while continuing to assert that LCvR7.1 cannot be fairly read to apply to replies to responses to habeas petitions when untethered from a formal motion.

ensure that the Court has before it all of the necessary information and argument to make a reasoned decision. Although Respondents allege that Petitioner's reply "makes arguments that could have been included in the Petition," Respondents do not identify which arguments they refer to. *See* ECF No. 14. at 3.

Rule 1 of the Federal Rules of Civil Procedure indicates that the purpose of the rules are "to secure the **just**, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1 (emphasis added). Respondents do not attempt to explain how striking Petitioner's reply would secure a just determination in this action. Moreover, Fed. R. Civ. P. 83(a)(2) provides that "[a] local rule imposing a requirement of form **must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply**." (emphasis added). Thus, even if the undersigned counsel is found to have violated LCvR7.1(h), the foregoing demonstrates that the failure belongs to the undersigned, not Petitioner, and was nonwillful noncompliance. Rule 83(a)(2) therefore prevents the Court from granting Respondents' motion regardless of its merits.

Respondents cited no apposite cases in support of their motion to strike that might indicate their motion should be granted. However, Petitioner can point to authority to show that Respondents' motion to strike should be denied. In *Lacy v. Parker*, No. 08-CV-1094-R, 2009 WL 1079983 (W.D. Okla. Apr. 22, 2009), Magistrate Valerie K. Couch stated:

> Petitioner moves to strike the Response, *see* Petitioner's Reply and Motion to Strike Respondent's Answer Brief [Doc. # 16], on grounds that the Response does not comply with LCvR 7.1(e). Local Civil Rule 7.1(e) governs "motion practice" and states that without leave of court, opening and response briefs—other than those involving summary judgment—are limited to 25 pages. Petitioner claims the 28–page Response violates this rule and is not properly indexed. However, **"[t]his Court has generally not**

> **interpreted the local civil rule to restrict the page-limits on response briefs in habeas proceedings. The reason is that the response to the habeas petition is treated in the habeas rules as an 'answer' rather than a motion or brief."** *See* Respondent's Response to Petitioner's Reply [Doc. # 17], Exhibit 1, Order, *Galloway v. Howard,* Case No. CIV–08–285–C (W.D.Okla. June 4, 2008) (*citing* Rule 5, Rules Governing Section 2254 Cases in the United States District Courts). Petitioner's motion to strike the Response, therefore, should be denied.

2009 WL 1079983, at *12 (emphasis added). Thus, in the opposite context, when a Petitioner sought to apply LCvR7.1(h) against the government for a litigation advantage, that attempt was properly rebuffed. The same result should occur here.

Relatedly, LCvR1.2(c) provides that "[t]he trial judge has discretion in any civil or criminal case to waive any requirement of these local rules when the administration of justice requires." Petitioner respectfully submits that, to the extent the undersigned has inadvertently violated LCvR7.1(h), the administration of justice requires the Court to exercise its discretion and waive application of that rule's page limitations in the context of Petitioner's reply brief. *See Ewart v. Halac*, No. 15-CV-155-JED-FHM, 2016 WL 8199688, at *1 (N.D. Okla. July 6, 2016) (relying on LCvR 1.2(c)'s administration of justice language to reject the defendant's motion to strike a brief that was approximately 20 pages in length and filed without the index required by local rules because "efficiency will be promoted").

CONCLUSION

The Court must deny Respondents' motion to strike.

DATED: November 24, 2025 Respectfully submitted,

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