

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**ZUHDIJA OMEROVIC,
No. A077-685-306,**

Petitioner,

vs.

Case No. 17-cv-605-DRH

**LISA MADIGAN,
JOHN F. KELLY,
RICARDO A. WONG,
SOUTHERN DISTRICT of ILLINOIS
FIELD OFFICE,
and WARDEN,**

Respondents.

MEMORANDUM AND ORDER

HERNDON, District Judge:

Petitioner Omerovic is currently imprisoned at the Pulaski County Detention Center in Ullin, Illinois (Doc. 1). Proceeding *pro se*, he filed the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge his continued detention. Petitioner claims that he has been detained by Immigration & Customs Enforcement (ICE) for more than 6 months following his August 31, 2016, removal order, and that his removal from the United States is not reasonably foreseeable due to the failure to verify his citizenship in Bosnia and Herzegovina.

Petitioner's country of origin is the former Yugoslavia, currently Bosnia-Herzegovina. (Doc. 1, p. 3). Upon entry of the order of removal, the judge told petitioner that he would be deported to Bosnia-Herzegovina. Petitioner

surrendered all his paperwork to DHS/ICE. After 6 months, the Bosnia-Herzegovina government responded by denying the issuance of travel documents for petitioner, stating they could not verify that Petitioner is a citizen of Bosnia-Herzegovina. (Doc. 1, p. 9). Because of this situation, petitioner asserts that his removal to Bosnia-Herzegovina is not likely to be accomplished in the foreseeable future. (Doc. 1, p. 3). He further points out that he has acted in good faith with regards to the application for travel documents and has fully cooperated with ICE. At the time he filed this action, petitioner had been detained for 12 months, of which 8 months elapsed after the order of removal. (Doc. 1, p. 5).

Because the government of Bosnia-Herzegovina has declared that petitioner's citizenship cannot be confirmed, petitioner claims that he is a "stateless person." (Doc. 1, p. 7). Petitioner has been detained in the custody of ICE for more than 6 months. Due to the length of Petitioner's detention, the denial of travel documents by Bosnia-Herzegovina, his claim that he does not pose a danger to the public, and the availability of housing with his relatives who are U.S. citizens, petitioner argues that he should be released on supervision. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

Without commenting on the merits of petitioner's claims, the Court concludes that the petition survives preliminary review under Rule 4 and Rule 1(b)¹ of the Rules Governing Section 2254 Cases in United States District Courts, and a response shall be ordered.

¹ Rule 1(b) of those Rules gives this Court the authority to apply the rules to other habeas corpus cases, such as this action brought under § 2241.

However, Petitioner has named several Respondents who are not proper in a § 2241 action. In *Kholiyavskiy v. Achim*, 443 F.3d 946, 952-53 (7th Cir. 2006), the Seventh Circuit held that an immigration detainee raising substantive and procedural due process challenges to his “confinement while awaiting removal” could only name the person who has immediate custody of him during his detention, and not high-level Immigration and Customs Enforcement officials or the Attorney General. Accordingly, all defendants other than the Warden of the Pulaski County Detention Center shall be dismissed from this case.

Pending Motion

The motion for appointment of counsel (Doc. 2) is **REFERRED** to the United States Magistrate Judge for consideration.

Disposition

IT IS HEREBY ORDERED that Illinois Attorney General Lisa Madigan, DHS Secretary John F. Kelly, Ricardo A. Wong, and the Southern District of Illinois Field Office (which is not a person) are **DISMISSED** from this action.

IT IS FURTHER ORDERED that the Warden of the Immigration Detention Facility/Pulaski County Detention Center shall answer the petition within thirty days of the date this Order is entered. This Order to respond does not preclude the respondent from making whatever waiver, exhaustion, or timeliness arguments it may wish to present to the Court. Service upon the Warden of the Immigration Detention Facility/Pulaski County Detention Center, 20 Justice Drive, Ullin, Illinois, 62992 shall constitute sufficient service.

Pursuant to Federal Rule of Civil Procedure 4(i), the **CLERK** is **DIRECTED** to send a copy of the letter constituting service, the petition, and this Order to the United States Attorney for the Southern District of Illinois, 750 Missouri Avenue, East St. Louis, and to send a copy of the letter constituting service, Petition, and Order via registered or certified mail to the United States Attorney General in Washington, D.C., and to the United States Department of Homeland Security.

IT IS FURTHER ORDERED that, pursuant to Local Rule 72.1(a)(2), this cause is **REFERRED** to Magistrate Judge Clifford J. Proud for further pre-trial proceedings.

IT IS FURTHER ORDERED that this entire matter be **REFERRED** to Magistrate Judge Clifford J. Proud for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all parties consent to such a referral*.

Petitioner is **ADVISED** of his continuing obligation to keep the Clerk (and each opposing party) informed of any change in his whereabouts during the pendency of this action. This notification shall be done in writing and not later than seven (7) days after a transfer or other change in address occurs. Failure to provide such notice may result in dismissal of this action. *See* FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

Dated: July 13, 2017

David R. Herndon



Digitally signed by
Judge David R.
Herndon
Date: 2017.07.13
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United States District Judge