

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**RAFAEL VARELA,**

**Plaintiff,**

**1:10-cv-1390  
(GLS/DRH)**

**v.**

**THE COUNTY OF RENSSLEAR<sup>1</sup> et al.,**

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

Rafael Varela  
Pro Se  
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Troy, NY 12180

**FOR THE DEFENDANTS**

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<sup>1</sup> The Clerk is directed to amend the caption to correct the spelling of "Rensselaer."

Office of Joshua A. Sabo  
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Troy, NY 12180

JOSHUA A. SABO, ESQ.

**Gary L. Sharpe**  
**Chief Judge**

## **MEMORANDUM-DECISION AND ORDER**

### **I. Introduction**

Plaintiff *pro se* Rafael Varela commenced this action in New York State Supreme Court alleging his constitutional rights were violated by defendants. (See *generally* Dkt. No. 1, Attach. 1.) Following defendants removal to this court, (see Dkt. No. 1 at 1-4), Varela filed, among other things, a motion for a preliminary injunction (PI) and temporary restraining order (TRO). (See Dkt. No. 50.) In a Report-Recommendation and Order (R&R) filed March 8, 2012, Magistrate Judge David R. Homer recommended that Varela's motion be denied.<sup>2</sup> (See *generally* R&R, Dkt. No. 67.) Pending are Varela's objections to the R&R. (See Dkt. No. 74.) For the reasons that follow, the R&R is adopted in its entirety.

### **II. Standard of Review**

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<sup>2</sup> The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

Before entering final judgment, this court routinely reviews all report and recommendation orders in cases it has referred to a magistrate judge. If a party has objected to specific elements of the magistrate judge's findings and recommendations, this court reviews those findings and recommendations *de novo*. See *Almonte v. N.Y. State Div. of Parole*, No. 04-cv-484, 2006 WL 149049, at \*6-7 (N.D.N.Y. Jan. 18, 2006). In those cases where no party has filed an objection, or only a vague or general objection has been filed, this court reviews the findings and recommendations of the magistrate judge for clear error. See *id.*

### **III. Discussion**

Varela's first objection to the R&R addresses Judge Homer's purported misunderstanding of the "Constitutional right to freedom and liberty of Mr. Varela (to drive where ever he wants)." (Dkt. No. 74 ¶ 2.) Based on this right—which essentially amounts to the right to drive without restriction—Varela avers that Judge Homer erred when he recommended that the PI/TRO be denied. (See *id.* ¶¶ 1-3.) Simply put, the court disagrees. Varela's claim is wholly unsubstantiated, and as such, is at best, a general or vague objection. (See *id.* ¶¶ 2-8.) Likewise, Varela's second objection, (see *id.* ¶¶ 10-15), to Judge Homer's footnote is of no

moment as the notation was *dicta* in the background section of the R&R.<sup>3</sup> (See R&R at 3 n.3.) More importantly though, Varela’s objection is moot as Judge Homer permitted him to amend his complaint, in which he can articulate the substance of his objection. (See R&R at 11, 14.) Because Varela fails to raise any specific errors in the R&R, the court concludes that a *de novo* review is unnecessary. Having found no clear error in the R&R, the court accepts and adopts Judge Homer’s R&R in its entirety.

#### **IV. Conclusion**

**WHEREFORE**, for the foregoing reasons, it is hereby

**ORDERED** that the Clerk is directed to amend the caption to correct the spelling of “Rensselaer”; and it is further

**ORDERED** that Magistrate Judge David R. Homer’s March 8, 2012 Report-Recommendation and Order (Dkt. No. 67) is **ADOPTED** in its entirety; and it is further

**ORDERED** that Varela’s motion for PI/TRO (Dkt. No. 50) is **DENIED**; and it is further

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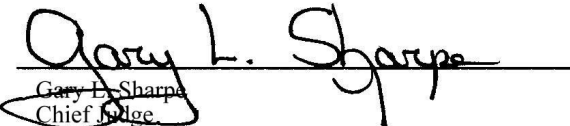
<sup>3</sup> Varela filed a Revised Objection to the R&R on March 27, 2012. (See Dkt. No. 78.) In addition to being untimely, (see R&R at 14), the Revised Objection is irrelevant as the inclusion of the Family Court order—the only substantive difference between the original and revised objection—addresses Judge Homer’s footnote, not the propriety of a PI/TRO. (See Dkt. No. 78 at 3-7.)

**ORDERED** that the Clerk provide a copy of this Memorandum-

Decision and Order to the parties.

**IT IS SO ORDERED.**

April 17, 2012  
Albany, New York

  
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Gary L. Sharpe  
Chief Judge  
U.S. District Court