

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
OKLAHOMA

An Van Vo v. Markwayne Mullin, et al.

An Van Vo v. Markwayne Mullin, et al. · No. CIV-26-410-J · Decided May 13, 2026

SUMMARY

The court adopted a magistrate judge's Report and Recommendation and dismissed without prejudice a pro se petition under 28 U.S.C. § 2241 challenging immigration detention. The dismissal was based on the petitioner's failure to pay the filing fee, seek in forma pauperis status, or otherwise comply with the court's deficiency order, and his failure to object to the recommendation.

CASE DETAILS

COURT	United States District Court for the Western District of Oklahoma
WRITING FOR THE COURT	Bernard M. Jones, II
JURISDICTION	United States District Court for the Western District of Oklahoma
DECIDED	May 13, 2026
DOCKET	CIV-26-410-J
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner filed a pro se petition under 28 U.S.C. § 2241 challenging his immigration detention. After petitioner failed to pay the filing fee or seek leave to proceed in forma pauperis, the magistrate judge recommended dismissal without prejudice, and the district court adopted the recommendation.
STANDARD OF REVIEW	The district court reviewed the magistrate judge's Report and Recommendation under 28 U.S.C. § 636(b)(1)(B), (C).
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	An Van Vo v. Markwayne Mullin, et al.

TOPICS

- federal habeas corpus
- immigration detention
- civil procedure

PRACTICE AREAS

- federal habeas corpus
- immigration detention
- civil procedure

QUESTIONS PRESENTED

1. Whether the court should dismiss the § 2241 petition without prejudice because petitioner failed to pay the filing fee, seek in forma pauperis status, or otherwise comply with the court's order.
2. Whether petitioner waived appellate review of the factual and legal issues addressed in the Report and Recommendation by failing to object.

HOLDINGS

1. A court may dismiss a petition without prejudice under Federal Rule of Civil Procedure 41(b) when a petitioner fails to pay the filing fee, seek in forma pauperis status, or comply with a court order after being warned of the possibility of dismissal.
2. A party who fails to object by the prescribed deadline waives appellate review of the factual and legal issues addressed in the magistrate judge's Report and Recommendation.

KEY QUOTATIONS

“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders.” (1204 n.3)

FACTUAL BACKGROUND

Petitioner, proceeding pro se, filed a § 2241 petition challenging his detention by United States Immigration and Customs Enforcement. He neither paid the \$5.00 filing fee nor sought leave to proceed in forma pauperis. After the magistrate judge ordered him to cure the deficiency and warned that failure to comply could result in dismissal, petitioner took no action.

PROCEDURAL HISTORY

The petition was referred to Magistrate Judge Amanda L. Maxfield for initial proceedings. The magistrate judge ordered petitioner to cure the filing-fee deficiency by April 13, 2026, warning that noncompliance could result in dismissal. Petitioner did not pay the fee, file an in forma pauperis motion, communicate with the court, or object to the Report and Recommendation by May 11, 2026. The district court adopted the Report and Recommendation and dismissed the petition without prejudice.

DISPOSITION

dismissed

CASES CITED

- Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2020)
- DeAtley v. Williams, 782 F. App'x 736, 737 (10th Cir. 2019)
- Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)

OPINION

Vo

PER CURIAM.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

AN VAN VO,)

) Petitioner,)) v.) Case No. CIV-26-410-J) MARKWAYNE MULLIN, et al.,)) Respondents.)

ORDER

Petitioner, appearing pro se, filed a Petition under 28 U.S.C. § 2241 challenging his detention with the United States Immigration and Customs Enforcement, but did not pay the \$5.00 filing fee or seek leave to proceed in forma pauperis. [Doc. No. 1]. The matter was referred for initial proceedings to United States Magistrate Judge Amanda L. Maxfield consistent with 28 U.S.C. § 636(b)(1)(B), (C). Judge Maxfield ordered Petitioner to cure the deficiency on or before April 13, 2026, and instructed Petitioner that his “[f]ailure to comply . . . may result in dismissal of this action.” [Doc. No. 5]. Petitioner’s deadline has passed, and he has not paid the filing fee, moved for leave to proceed in forma pauperis, or otherwise communicated with the Court. Accordingly, Judge Maxfield issued a Report and Recommendation recommending that the Court dismiss the action without prejudice. [Doc. No. 6]. Despite being cautioned that he must file any objection no later than May 11, 2026, Petitioner did not object and has waived his right to appellate review of the factual and legal issues addressed in the Report and Recommendation. See *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2020). Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 6] and DISMISSES the Petition under 28 U.S.C. § 2241 without prejudice. See Fed. R. Civ. P. 41(b); see also *DeAtley v. Williams*, 782 F. App’x 736, 737 (10th Cir. 2019) (affirming dismissal of habeas petition under Rule 41(b)); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003) (“Although the language of Rule 41(b) requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or court’s orders.”). A separate judgment will enter. IT IS SO ORDERED this 13th day of May, 2026. Wet m-

s7

BERNARD M. JONES, II

UNITED STATES DISTRICT JUDGE