

*The Honorable John C. Coughenour
The Honorable Michelle L. Peterson*

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ELILE ADAMS,

Petitioner,

v.

RAYMOND DODGE, RAJEEV
MAJUMDAR, BETTY LEATHERS,
DEANNA FRANCIS, NOOKSACK TRIBAL
COURT, and NOOKSACK INDIAN TRIBE,

Respondents.

Case No. 2:19-cv-01263 JCC

**RESPONDENT JUDGES DODGE
AND MAJUMDAR’S RESPONSE
TO OBJECTIONS TO
MAGISTRATE’S REPORT**

**NOTED FOR CONSIDERATION:
MARCH 27, 2020**

INTRODUCTION

Respondents Nooksack Tribal Court Chief Judge Raymond G. Dodge, Jr., and Pro Tem Judge Rajeev Majumdar (“Respondent Judges”), pursuant to the Magistrate’s March 3, 2020 Report and Recommendation (Dkt. 35), hereby respond to Petitioner Elile Adams’ Objections to Magistrate’s Report and Recommendation.¹ (Dkt. 36).

This Court should adopt the Report and Recommendation of the Magistrate and deny Petitioner’s Objections and request for a writ of habeas corpus. First, Petitioner’s so-called “Objections” largely fail to present any specific objections on which basis the Court could reject or modify the Magistrate’s Report and Recommendation. Instead, Petitioner rehashes the arguments she has already set forth, asserts the new theory that she has exhausted tribal court

¹ Although Petitioner’s Motion was presented as a “Motion for Reconsideration or, Alternatively, Objections to Magistrate’s Report and Recommendation”, the Court subsequently re-noted the Motion as Objections. Respondent Judges therefore treat the pleading filed by Petitioner as Objections.

1 remedies, and claims that there is “new evidence” warranting a writ of habeas corpus. As
 2 Objections should not be used to re-litigate the entire basis for the Magistrate’s Report, the Court
 3 should deny Petitioner’s invitation to “reconsider” the Report and Recommendation in its
 4 entirety.

5 Second, although the Magistrate’s Report should be adopted as issued, if the Court is
 6 inclined to reconsider, the Magistrate should first proceed with consideration of the arguments by
 7 Respondent Judges which set forth other grounds for dismissal of Petitioner’s habeas corpus
 8 petition. Those grounds include that Judges Dodge and Majumdar are improper respondents in a
 9 habeas corpus petition and that they are entitled to judicial immunity. Each of these arguments
 10 provides an independent basis for dismissal. Thus, before the Court makes any further
 11 determinations as to the disposition of this case outside of adopting the Magistrate’s Report, the
 12 Court should first return the matter to the Magistrate with instructions to consider each basis for
 13 dismissal as asserted by Respondent Judges.

14 STANDARD OF REVIEW

15 **A. Objections to Magistrate’s Report**

16 Pursuant to MJR 4(c),² “[a]fter the magistrate judge’s proposed findings,
 17 recommendations or report have been filed, further proceedings before the district judge shall be
 18 governed by Fed.R.Civ.P. 72(b) in a civil case.” Under Fed. R. Civ. P. 72(b)(2), within 14 days
 19 after being served with a copy of the recommended disposition, “a party may serve and file
 20 specific written objections to the proposed findings and recommendations.” A party may then
 21 respond to another party’s objections within 14 days after being served with a copy. *Id.* The
 22 district judge must then “determine de novo any part of the magistrate judge’s disposition that
 23 has been properly objected to. The district judge may accept, reject, or modify the recommended
 24

25 ² Petitioner and the non-Judge Respondents assert that the Objections are governed by MJR 3(b), which relates to non-
 26 dispositive pre-trial rulings. It is unclear to Respondent Judges, however, on what basis this matter is non-dispositive,
 27 given that the Magistrate’s Report and Recommendation are made in response to a motion to dismiss from non-Judge
 Respondents and that the Respondent Judges also sought dismissal of this action. Respondent Judges therefore submit
 that the Objections are governed by MJR 4(c).

1 disposition; receive further evidence; or return the matter to the magistrate judge with
2 instructions.” FRCP 72(b)(3).

3 ARGUMENT

4 **A. Petitioner Misuses the Objections as Way to Re-Litigate Her Habeas Petition**

5 Petitioner presents only two specific objections to the Magistrate’s Report. First,
6 Petitioner claims that the Magistrate “misapprehended that the July 30, 2019 arrest at issue arose
7 on ‘Nooksack tribal trust land,’ seeming to reject Petitioner’s claim that she ‘was not on the
8 Reservation at the time of her arrest.’” Dkt. 36 at 2 (citing Dkt. 35 at 7–8). The second specific
9 objection is that the Magistrate erred in finding that Petitioner could move for acquittal on the
10 grounds the Nooksack Parenting Action is void because “Petitioner has never received a
11 Summons to appear for the alleged July 19, 2019, FTA violation.” Dkt. 36 at 5–6 (citing Dkt. 35
12 at 14). As these are the only specific objections to the Report and Recommendation raised by
13 Petitioner, they are the only objections that the Court should consider. *See Czaplá v. Dep’t of*
14 *Corr.*, C11-0317-JCC, 2011 WL 6887123, at *1 (W.D. Wash. Dec. 29, 2011) (explaining that
15 while the district court must make a de novo determination of those portions of a magistrate
16 judge’s report or proposed findings or recommendations to which a party objects, de novo
17 review “is not required when a party fails to direct a court to a specific error in the proposed
18 findings and recommendations.”).

19 Other than the two specific references to the Report and Recommendation, Petitioner
20 simply continues to generally argue the merits of her case, citing alleged “new evidence” and
21 asserting that the “tribal exhaustion doctrine does not apply” and “comity is unwarranted.” Dkt.
22 36. At 2–7. Further, despite having previously asserted that she was *not* required to exhaust tribal
23 administrative remedies because all three exceptions to exhaustion applied, Dkt. 35 at 8,
24 Petitioner now submits that she *has* exhausted all available Tribal Court remedies. Dkt. 36 at 5.
25 Petitioner’s alleged “new evidence” and new arguments are not appropriate subjects of
26 Objections to the Magistrate’s Report, since they do not identify specific errors by the
27 Magistrate. *See Czaplá*, 2011 WL 6887123, at *1 (W.D. Wash. Dec. 29, 2011) (“without a

1 specific objection to particular aspects of the report and recommendation, ‘the district court’s
2 attention is not focused on any specific issues for review, thereby making the initial [referral] to
3 the magistrate useless . . .”).

4 Nor is it appropriate for Petitioner to re-litigate her case through the Objections. *See*
5 *Palmer v. Fraker*, C09-5703 RJB, 2010 WL 1850795, at *1 (W.D. Wash. May 7, 2010)
6 (adopting magistrate’s report and denying habeas corpus where petitioner’s objections were
7 “simply a restatement of the argument that has been exhaustively and thoroughly analyzed by the
8 Magistrate Judge.”); *see also Pitts v. Glebe*, C09-5713 RJB, 2010 WL 2330316, at *1 (W.D.
9 Wash. June 7, 2010). The Court should reject Petitioner’s attempt to misuse the “Objections” to
10 broadly challenge the entire basis for the Magistrate’s Report and Recommendation.

11 Finally, the two specific objections Petitioner raises should be overruled. With regard to
12 where the arrest occurred, the Magistrate correctly determined that “Petitioner’s conclusory
13 assertions that jurisdiction is plainly lacking because she was not within the bounds of the
14 reservation at the time of her arrest are insufficient to show there is no plausible claim of an
15 absence of jurisdiction, especially given the record.” Dkt. 35 at 8. This remains true, despite
16 Petitioner’s continuing bare claim that the Tribal Court “plainly lacks jurisdiction.” Dkt. 36 at 6.
17 Further, Petitioner’s claim that she has never received a summons for her failure to appear
18 violation does not change the fundamental fact that she has failed to establish futility as an
19 exception to the tribal exhaustion doctrine. Indeed, the Magistrate correctly concluded that
20 Petitioner had “several ways” in which she could—but has not—raise her jurisdictional
21 arguments. Dkt. 35 at 11. As Petitioner has failed to show that the absence of jurisdiction or
22 futility apply as exceptions to the tribal exhaustion doctrine, the Court should overrule
23 Petitioner’s objections and adopt the Magistrate’s Report and Recommendation.

1 **B. If the Court is Inclined to Reconsider, It Should First Return the Matter to the**
 2 **Magistrate With Instructions to Review Each Independent Basis of Dismissal Set**
 3 **Forth By Respondent Judges**

4 In the Report and Recommendation, the Magistrate acknowledged that “Respondents also
 5 present alternative grounds as to why Petitioner’s habeas petition should be dismissed,”
 6 including that “Respondent Judge Dodge and Pro Tem Judge Majumdar argue that they are
 7 entitled to judicial immunity and should therefore be dismissed,” and that “Judge Dodge argues
 8 he should be dismissed from this action because he recused himself from the Nooksack Criminal
 9 Action and therefore lacks power to release Petitioner from her detention.” Dkt. 35 at 15. Each of
 10 these arguments provides an independent basis on which the Court should dismiss Petitioner’s
 11 habeas petition. However, the Magistrate concluded that “[b]ecause the Court finds Petitioner’s
 12 habeas petition should be dismissed for failure to exhaust tribal court remedies, the Court need
 not address Respondents’ alternative grounds.” *Id.*

13 As explained above, the Court should adopt the Magistrate’s Report and
 14 Recommendation as issued. However, should the Court be inclined to take any other action, in
 15 the interest of fairness it should first “return the matter to the magistrate judge with instruction,”
 16 as permitted by Fed. R. Civ. P. 72(b), and direct the Magistrate to proceed with consideration of
 17 the arguments asserted by Respondent Judges in their Return.

18 **CONCLUSION**

19 For the foregoing reasons, Respondent Judges respectfully request that the Court adopt
 20 the Magistrate’s Report and Recommendation, grant their Return and dismiss Petitioner’s habeas
 21 petition. In the alternative, Respondent Judges request that before taking any other action, the
 22 Court return the Report and Recommendation to the Magistrate with the instruction to consider
 23 each independent basis for dismissal as set forth by Respondent Judges.

24 DATED this 23rd day of March, 2020.

25 By: /s/ Rob Roy Smith

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