UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

POURIA POURHOSSEINHENDABAD	**CIVIL NO: 1:25-cv-00987**
VERSUS	**DISTRICT JUDGE DRELL**
DONALD J. TRUMP, ET AL	**MAGISTRATE JUDGE PEREZ-MONTES**

RESPONDENTS' OBJECTION TO ORDER GRANTING PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER, MOTION TO VACATE THAT ORDER, AND MOTION TO DISMISS AS MOOT

NOW INTO COURT, by and through the undersigned Assistant United States Attorney, come Respondents, who respectfully object to the District Court's Order adopting the report and recommendation of the Magistrate Judge and granting the Motion for Temporary Restraining Order (ECF 9), move to vacate that order, and move to dismiss the proceedings for lack of jurisdiction. Counsel for Petitioner was contacted on July 17, 2025, and opposes these motions.

The Respondents object to and seek to vacate the District Court's adoption of the report and recommendation granting a temporary restraining order. Specifically, the Respondents object to the District Court's de novo review and adoption of the reasons contained in the report and recommendation prior to the filing of objections by the Respondents in contravention of 28 U.S.C. 636(b) and Federal Rule of Civil Procedure 72. Additionally, the Respondents further move to dismiss the injunctive motion and habeas petition as moot due to the Petitioner's release from custody as further set forth below.

I. OBJECTION TO AND MOTION TO VACATE ORDER GRANTING TRO

A. BACKGROUND

This petition for writ of habeas corpus was filed by Petitioner on Thursday, July 10, 2025. (ECF 1). Counsel for Petitioner notified the Respondents of the filing of the habeas petition by

courtesy email on Friday morning, July 11, 2025. Then, on Friday afternoon, Petitioner filed a motion for temporary restraining order and injunctive relief (ECF 3) and a corresponding motion to expedite consideration. (ECF 4). The motions both noted the Respondents' opposition to same. (ECF 3, p. 1 and ECF 4, p. 2).

On the morning of Monday, July 14, 2025, the undersigned counsel for the Respondents filed a notice of appearance in this matter. (ECF 5). Shortly thereafter, the Magistrate Judge granted the Petitioner's motion to expedite by minute entry. (ECF 6). Then, later that afternoon, the Magistrate Judge issued a report and recommendation that the motion for temporary restraining order be granted. (ECF 7). The report and recommendation specifically noted that the parties may filed written objections to the report within 14 days of service, citing 28 U.S.C. §636(b)(1)(C) and Fed. R. Civ. Pro 72(b). *Id.* Additionally, the electronic notice of this report set the deadline for objections to the report and recommendation for July 28, 2025. (Ex. A – Electronic Notice dated July 14, 2025, at 5:00 p.m.). No further notices related to the report and recommendation, nor briefing deadlines were entered by the Court. However, on July 17, 2025, the District Court entered an order adopting the report and recommendations, entering a temporary restraining order enjoining the Respondents from removing or transferring the Petitioner, and setting a preliminary hearing in the matter on July 24, 2025. (ECF 9). Notably, the Petitioner was released from ICE custody on July 16, 2025, before the entry of the Court's order adopting the report and recommendation. *See* Declaration of Humphries, attached as Exhibit A.

In reliance on the notice in Magistrate's report and recommendation, as well as the deadline to file objections set by the Court, the Respondents had not yet filed their objections to the report and recommendation at the time the District Court entered its order adopting the report on July 17, 2025.

Accordingly, the Respondents object to the order of the District Court to the extent it conducted a de novo review and adopted the reasoning of the report and recommendation, which was derived solely from the facts alleged by Petitioner in his verified complaint (ECF 1) and the law set forth by Petitioner in his motion for temporary restraining order (ECF 3), without consideration of any opposition to the allegations by the Respondents. *See* (ECF 7).

B. LAW AND ARGUMENT

"A magistrate judge's authority to issue dispositive orders derives from Article III district courts, and that authority must be properly delegated. A district court may refer a matter to a magistrate judge for pretrial, non-dispositive orders under 28 U.S.C. § 636(b). But a magistrate judge acting under § 636(b) delegation has no power to dispose of a case, and rather may only make recommendations, with the district court retaining the power to accept, reject, or modify the proposal before finally deciding the case. 28 U.S.C. § 636(b)(1)." *Sealed Appellee v. Sealed Appellant*, No. 21-10427, 2022 WL 597249, at *1 (5th Cir. Feb. 28, 2022) (cleaned up); *see also Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1461 (10th Cir. 1988)("Magistrate judges are "not Article III judicial officers" and their "jurisdiction and powers ... are governed by 28 U.S.C. § 636 and limited by the Constitution.").

Section 636(b) list certain dispositive pretrial matters in civil cases in which the magistrate judge may only issue a recommendation, including motions for injunctive relief. *See Davidson v. Georgia-Pacific, LLC*, 819 F.3d 758 (5th Cir. 2016)(citing 28 U.S.C. § 636(b)(1)(A)). Therefore, while magistrates may hear dispositive motions, they may only make proposed findings of fact and recommendations, and district courts must make de novo determinations as to those matters if a party objects to the magistrate's recommendations. *Id.* (also citing Fed. R. Civ. P. 72(b)(3)). "Constitutional concerns explain the statutory distinction between types of pretrial matters.

Motions thought 'dispositive' of the action warrant particularized objection procedures and a higher standard of review because of the possible constitutional objections that only an article III judge may ultimately determine the litigation." *Id.* (citing 12 CHARLES ALAN WRIGHT ET. AL., FEDERAL PRACTICE AND PROCEDURE § 3068.2 (3d ed. 2014)).

The particularized objection procedures mentioned by the Fifth Circuit in *Davidson* are found in both 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). Section 636(b)(1)(C) provides:

> [T]he magistrate judge shall file his proposed findings and recommendations under subparagraph B with the court and a copy shall be mailed to all parties. Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. . .

28 U.S.C. 636(b)(1)(C). Similarly, Rule 72(b) provides that: (1) the magistrate must conduct required proceedings when assigned to hear, without the parties' consent, a pretrial matter dispositive of a claim, (2) the magistrate must entered his recommended disposition and proposed findings of fact (if appropriate), (3) the clerk must serve a copy on each party, (4) a party is allowed 14 days after being served with the recommended disposition to serve and file written objections, and (5) a district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. *See* Fed. R. Civ. P. 72(b).

In the instant matter, the Respondents contested Petitioner's motion for temporary restraining order and motion to expedite consideration. (ECF 3, p. 1 and ECF 4, p. 2). However, the Respondents were not given an opportunity to object to the magistrate's report and recommendation on the injunctive motion pursuant to these particularized statutory procedures.[1]

[1] In addition to 28 U.S.C. 636(b) and Fed. R. Civ. P. 72(b), Local Rule 7.4 also specifies that, "if a motion is contested, the clerk of court will usually issue a Notice of Motion Setting that provides briefing deadlines. A judge may order other instructions with respect to a motion. If no Notice of

Instead, the District Court entered an order adopting the report and recommendation in its entirety, stating, "[a]fter independent (*de novo*) review of the record and for the reasons contained in the Report and Recommendation of the Magistrate Judge previously filed herein. . .". (ECF 9). However, the Court could not properly undergo a de novo review without first providing the Respondents with their statutory right to timely object to the magistrate's findings in the report and recommendation. Furthermore, because the Magistrate Judge issued his report and recommendations before any opposition was filed by the Respondents, despite the opposition being noted in Petitioner's motion and a notice of appearance being made, the Respondents have had no opportunity to present any opposition to the Petitioner's allegations in the petition or motion.[2]

Accordingly, Respondents respectfully request that the order of the District Court adopting the reasons contained in the report and recommendation after a de novo review be vacated. Furthermore, to the extent that the Court deems it necessary to reconsider the motion for temporary restraining order notwithstanding the motion to dismiss for mootness set forth below, the Respondents request that it be given an opportunity to comply with the particularized procedures set forth in 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b) and file its objections to that report.

Motion Setting issues and the judge does not order briefing instructions, the default rule is that a memorandum in opposition may be filed within 14 days after a motion is filed." However, in this case, the clerk never issued a notice of motion setting, and then Judge did not order other instructions with respect to the motion. Accordingly, the default deadline for an opposition to the motion for temporary restraining order should have likewise been fourteen days from the filing of the motion on July 11, 2025.

[2] The Respondents oppose the petitioner's motion for temporary restraining order on the following bases: (1) the District Court's lack of jurisdiction over the commencement of removal proceedings and claims directly connected thereto under 8 U.S.C. §1252(g), (2) the inapplicability of the Administrative Procedures Act, and (3) the petitioner's inability to meet the requisite factors to obtain a temporary restraining order.

II. MOTION TO DISMISS PROCEEDINGS FOR LACK OF JURISDICTION

Since Petitioner filed his petition for writ of habeas corpus on July 10, 2025, he was released from ICE custody on July 16, 2025, and is no longer being detained. Ex. A, ¶ 5. As such, Petitioner can no longer be afforded any habeas relief rendering his petition for writ of habeas, as well as his motion for temporary restraining order and injunctive relief, moot and depriving the Court of jurisdiction to further consider these claims.

Whether a claim is moot is a jurisdictional question. *See United States v. Lares-Meraz*, 452 F.3d 352, 355 (5th Cir. 2006). "A moot case presents no Article III case or controversy, and a court has no constitutional jurisdiction to resolve the issues it presents." *Goldin v. Bartholow*, 166 F.3d 710, 717 (5th Cir. 1999). "[A]n actual, live controversy must remain at all stages of federal court proceedings, both at the trial and appellate levels." *Lares-Meraz*, 452 F.3d at 355. "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *United States v. Heredia-Holguin*, 823 F.3d 337, 340 (5th Cir. 2016).

This case is moot because this Court cannot grant any effectual relief to Petitioner in his habeas petition, which seeks immediate release from ICE custody and an order prohibiting the transfer of Petitioner during the pendency of the habeas proceedings (also both core requests for relief in the motion for temporary restraining order and injunctive relief). The Petitioner specifically cites 28 U.S.C. §2241(c)(3) in his petition as the legal authority to challenge the lawfulness and constitutionality of his detention because he claimed to be "in custody in violation" of the law. (ECF 1, p. 8); *see also Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). However, by virtue of the statute itself, "a writ of habeas corpus shall not extend unless. . . he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §2241(c)(3); *see also Maleng v. Cook*, 490 U.S. 488 (1989)(recognizing the 2241(c)(3) custody requirement as

jurisdictional for a habeas claim); *see also Rose v. Hodges*, 423 U.S. 19, 21 (1975)("[a] necessary predicate for the granting of federal habeas relief to respondents is a determination by the federal court that their custody violates the Constitution, laws, or treaties of the United States.").

Based on applicable law, for Petitioner to maintain a petition for writ of habeas corpus, he must show that he is being held in custody in violation of the law, which he cannot do. Accordingly, this Court has no jurisdiction to consider Petitioner's habeas claim because he is no longer detained, and this matter is moot.

III. CONCLUSION

As set forth herein, the Respondents respectfully object to the District Court's Order adopting the report and recommendation of the Magistrate Judge and granting the Motion for Temporary Restraining Order (ECF 9), move to vacate that order, and move to dismiss the proceedings for lack of jurisdiction because they are moot.

Respectfully submitted,

ALEXANDER C. VAN HOOK
ACTING UNITED STATES ATTORNEY

By: *s/ Shannon T. Smitherman*
SHANNON T. SMITHERMAN (#32366)
Assistant United States Attorney
300 Fannin Street, Suite 3201
Shreveport, Louisiana 71101-3068
(318) 676-3600 // Fax: (318) 676-3642
Email: Shannon.smitherman@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 17, 2025, a copy of the foregoing Objection was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

s/ Shannon T. Smitherman
SHANNON T. SMITHERMAN (#32366)
Assistant United States Attorney