UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-03051-ECT-DJF

JOSE JACOB OTERO ESCALANTE,

Petitioner,

v.

PAMELA BONDI, *et al.*

Respondents.

RESPONDENTS' OBJECTIONS TO REPORT AND RECOMMENDATION

INTRODUCTION

In this habeas case, this Court has entered a Report & Recommendation (R&R) for a Temporary Restraining Order (TRO) enjoining Respondents from moving Petitioner out of this judicial district and the State of Minnesota pending the outcome of his habeas petition. ECF Nos. 10, 11. The Court provided Respondent's until 5:00 p.m. today, August 1, 2025, to submit Objections to the R&R. Respondents object to the proposed TRO for the following reasons.

ARGUMENT

A. THE COURT LACKS SUBJECT MATTER JURISDICTION.

Petitioner's habeas petition proceeds upon a fundamental misunderstanding of the basis for his removal from the United States and his concomitant detention pending that removal.

Petitioner is properly in removal proceedings. ICE detained Petitioner as an applicant for admission pursuant to 8 U.S.C. § 1225(b). ICE served him with a Notice to

Appear (NTA) alleging he is an alien present without admission or parole and inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is known as an applicant for admission. Per Section 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. The term "admission" is defined by the Immigration and Nationality Act ("INA") to mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. § 1235.1 (setting forth inspection procedures).

Section 1225(b)(1) provides for the inspection of aliens arriving in the United States for admission. And, relevant here, Section § 1225(b)(2)(A) provides for the inspection of all "other" applicants for admission and states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien ***shall be detained*** for a proceeding under section 240."[1] 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Such is the case here.

To the extent Petitioner challenges initiation of removal proceedings against him, this Court lacks jurisdiction to consider his claim. Section 1252(g) of Title 8 of the United States Code strips courts of "jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by [ICE] to ***commence proceedings*** … against

[1] Section 240 of the INA, codified at 8 U.S.C. § 1229a, refers to the full removal proceedings that the Petitioner is currently subject to before the Immigration Court.

any alien under this chapter" (emphasis added). Section 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon [certain categories of] prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999). Section 1252(g) plainly applies to decisions and actions to *commence* proceedings that ultimately may end in the execution of a final removal order. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) (§ 1252(g) includes not only a decision in an individual case *whether* to commence, but also *when* to commence a proceeding"); *Obado v. Superior Ct. of New Jersey Middlesex Cnty.*, No. CV 21-10420 (FLW), 2022 WL 283133, at *4 (D.N.J. Jan. 31, 2022).

Section 1252(g) further bars district courts from considering challenges to the *method* by which ICE chooses to commence removal proceedings. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also from reviewing "ICE's decision to take him into custody and to detain him during removal proceedings"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest [petitioner], clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g).").

And § 1252(g) precludes judicial review of both constitutional and statutory claims that arise from the commencement of removal proceedings. *See Candra v. Cronen*, 361 F. Supp. 3d 148, 156 (D. Mass. 2019) (explaining that a petitioner's "attempt to frame his claim in due process language does not change [the] result" that section 1252(g) strips

jurisdiction); *Anderson v. Moniz*, No. CV 21-11584-FDS, 2022 WL 375231, at *4 (D. Mass. Feb. 7, 2022) ("Section 1252(g) can serve as a jurisdictional bar even when a petitioner contends that his due-process rights were violated.").

Accordingly, to the extent Petitioner challenges ICE's initiation of removal proceedings against him, this Court lacks jurisdiction to review the claim.

Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A) which mandates that he remain in detention during the pendency of his removal proceedings. Pursuant to 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240." 8 U.S.C. § 1225(b)(2)(A).

Petitioner falls squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement. Petitioner is an "applicant for admission" to the United States. As described above, an "applicant for admission" is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Because Petitioner has not demonstrated to an examining immigration officer that he is "clearly and beyond a doubt entitled to be admitted," his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Petitioner *cannot* demonstrate that he is "clearly and beyond a doubt entitled to be admitted" because, as he is present in the United States without being admitted or paroled, he is inadmissible per 8 U.S.C. § 1182(a)(6). Thus, the Petitioner is properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he "shall be" detained.

This reasoning is supported by the Supreme Court. As explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), applicants for admission fall into one of two categories: those covered by Section 1225(b)(1) and those covered by Section 1225(b)(2). 583 U.S. at 287. Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. Section 1225(b)(1)(A)(i). Section 1225(b)(2), on the other hand, is "broader" and "serves as a catchall provision that applies to *all* applicants for admission not covered by 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 837 (emphasis added). Put another way, while Section 1225(b)(1) applies to aliens "arriving" in the United States, Section 1225(b)(2) applies to all "other" aliens who are applicants for admission—like Petitioner. Simply put, an alien does not lose his "applicant for admission" status simply because he was inspected at a time other than his immediate arrival in the United States. Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 ("[Section] 1225(b)(2) … mandates[s] detention of aliens *throughout the completion of applicable proceedings* and not just until the moment those proceedings begin." (emphasis added)).[2]

[2] The only means to obtain release for an applicant for admission is through parole. CBP and ICE have discretion to parole applicants for admission into the United States. *See* 8 U.S.C. § 1182(d)(5). For those detained under § 1225(b), regulations provide that ICE or CBP may grant parole if the alien is "neither a security risk nor a risk of absconding," and (1) has a serious medical condition; (2) is pregnant; (3) falls within certain categories of juveniles; (4) will be a witness; or (5) if continued detention is otherwise "not in the public interest." 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(c).

To the extent Petitioner claims his detention falls under 8 U.S.C. § 1226(a) and is discretionary simply because he has been placed in full removal proceedings, his argument is belied by the language of Section 1225(b) itself, which states that the alien "shall be detained for a proceeding under ***section 1229a*** of this title." (emphasis added). Moreover, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the Board of Immigration Appeals held that mandatory detention under 8 U.S.C. § 1225(b) applies to ***all*** "applicant[s] for admission," whether they are placed in expedited removal proceedings or in full removal proceedings under 8 U.S.C. § 1229a. *Id.* at 67-68; *see also Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that aliens who are present in the United States without admission or parole and placed into expedited removal proceedings are detained under Section 1225 even if later placed into full removal proceedings).

Accordingly, because all "other" applicants for admission—like Petitioner—who do not fall under Section 1225(b)(1) and have not demonstrated "clearly and beyond a doubt" that they are entitled to be admitted to United States under Section 1225(b)(2) "shall" be detained, Petitioner's detention is lawful.

B. THE COURT SHOULD DENY THE TRO.

Because ICE properly placed Petitioner in removal proceedings, because Congress declared that Petitioner must be detained pending the outcome of his removal proceedings, and because this Court lacks subject matter jurisdiction to review any and all claims arising out of Petitioner's removal and detention proceedings, this Court cannot issue any TRO or other order inhibiting ICE's actions in this case.

Apart from lack of subject matter jurisdiction the Court should not issue any TRO on the merits because Petitioner has not established the elements for a TRO. There can be no irreparable harm here because Petitioner is appropriately in removal and immigration detention. While he is in the early stages of his removal proceedings, those proceedings are moving with alacrity. Moreover, Petitioner delayed filing his habeas petition and the TRO motion for over a month after he was placed in removal proceeding and detained initially. This delay undermines any need for injunctive relief let alone any TRO. While the Respondents respect that the Court has attempted to "balance" the other *Dataphase* factors, she did so without soliciting Respondents' view of the matter. As set forth above, not only is there no irreparable harm here but the Court lacks subject matter jurisdiction to enter a TRO or any habeas relief whatsoever.

CONCLUSION

For these reasons, the other reasons to be explained in Respondents' response to the full motion for injunctive relief (ECF No. 4), and Respondents' return to the habeas petition (ECF No. 1), the court should overrule the R&R and deny the TRO.

Dated: August 1, 2025

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