

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

LORENZO C.P.<sup>1</sup>,  
*Petitioner*,

v.

KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security, *et al.*,  
*Respondents*.

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CIVIL ACTION NO. 1:25-cv-00181

**RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION TO DENY  
RESPONDENTS' MOTION TO DISMISS AND GRANT IN PART PETITIONER'S  
WRIT OF HABEAS CORPUS**

On October 31, 2025, the Magistrate Judge issued a 13-page Report and Recommendation to Deny Respondents' Motion to Dismiss and Grant in Part Petitioner's Writ of Habeas Corpus (hereafter the "R&R") (Dkt. No. 28). The R&R found that the Court had jurisdiction to review Petitioner's claim based on other district court decisions. Dkt. No. 28 at 1. The R&R found "Petitioner is incorrectly detained under § 1225(b)(2)[,]" and therefore recommends that the Court deny Respondents' Motion to Dismiss (Dkt. No. 20) and grant in part "Petitioner's claim (Dkt. No. 18) on statutory grounds by ENJOINING Respondents from detaining Petitioner under the statutory authority of 8 U.S.C. § 1225(b)(2)(A)." Dkt. No. 28 at 12.

Except for the Procedural History section of the R&R (Dkt. No. 28 at 1-3), Respondents, Kristi Noem, Secretary of U.S. Department of Homeland Security, *et al.*, respectfully object to the entirety of the R&R pursuant to 28 U.S.C. § 636(b)(1), and request that the Court dismiss Petitioner's Second Amended Petition for Habeas Corpus (Dkt. No. 18) on mootness grounds, or alternatively, deny a writ of habeas corpus because all claims raised in the Second Amended

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<sup>1</sup> "Due to significant privacy concerns in immigration cases and noting that judicial opinions are not subject to Federal Rule of Civil Procedure 5.2, any opinion, order, judgment, or other disposition in this case will refer to the petitioner's last names using only their first initial." See Dkt. No. 19 at 1, n.1.

Petition of Habeas Corpus, challenging the automatic stay provision 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c), (d), are moot.

Specifically, the R&R errs by failing to correctly identify the claims raised by Petitioner in his operative pleading and consequently, errs in analyzing a question that is not before this Court: “Whether the mandatory detention statute applies to Petitioner[.]” Dkt. No. 28 at 4. Instead, Petitioner’s operative pleading (Dkt. No. 18) challenged the lawfulness and constitutionality of the automatic stay provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c), (d), which permitted the ongoing detention of Petitioner following DHS’s appeal to the Board of Immigration Appeals (“BIA”) of the IJ’s August 14, 2025 order granting the release of Petitioner on bond. *See* Dkt. No. 1, ¶¶ 39-46; Dkt. No. 18, ¶¶ 39-46. His operative pleading alleges claims that the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c), (d), as applied to him, violate INA, his Fifth Amendments rights, and are ultra vires by permitting his continued detention pending BIA’s decision on DHS’s appeal of the IJ’s order despite being released from custody on bond. *See* Dkt. No. 18, ¶¶ 29-34, 45-53.

On September 10, 2025, this Court held a telephonic conference where “the parties informed the Court that Petitioner’s order for release on bond had been rescinded by the Immigration Judge.” Dkt. No. 16 at 1. Specifically, on September 9, 2025, the IJ issued a Bond Memorandum in Petitioner’s pending Bond Proceedings, where the immigration court “sua sponte rescind[ed] its prior order granting bond and denie[d]” Petitioner’s “request for release on bond.” Dkt. No. 20-1. The IJ noted that his reason for rescinding the August 14, 2025 order in which he ordered the Petitioner’s release on a \$4,000 bond was “based on a new precedential decision from the Board of Immigration Appeals” that was issued on September 5, 2025. *Id.* (citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)). After BIA’s *Hurtado* decision, the IJ correctly

reasoned that based on Petitioner entering the United States without admission or inspection in 1998 and thereafter residing in the United States without lawful status, Petitioner is deemed an applicant for admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), and is subject to mandatory detention. Dkt. No. 20-1 at 1. Accordingly, the immigration court held it lacked jurisdiction to order Petitioner's release on bond on August 14, 2025 because immigration judges "have no authority to redetermine the custody condition of an alien who crossed the border unlawfully without inspection, even if that alien has avoided apprehension for more than 2 years."

*Id.*

The R&R correctly provides that because the IJ rescinded its order on jurisdictional grounds, "Respondents no longer held Petitioner in custody pursuant to the automatic stay provision." Dkt. No. 28 at 2 (citing 8 C.F.R. § 1003.19(i)(2)). However, in filing his Second Amended Petition for Writ of Habeas Corpus on September 11, 2025—after leave was granted to do so—Petitioner did not amend his challenges to the automatic stay provisions despite Petitioner's prior representation to this Court at the telephone conference that "Petitioner's order for release on bond had been rescinded by the Immigration Judge." *See* Dkt. No. 16. at 1. In other words, Petitioner did not amend his habeas petition to challenge the lawfulness or constitutionality of his mandatory detention under 8 U.S.C. § 1225(b)(2) in light of the IJ's September 9, 2025, Bond Memorandum finding that it lacked prior jurisdictional authority to order Petitioner's release on bond. *See* Dkt. No. 20-1 (citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)).

Article III of the United States Constitution contains the "case and controversy" requirement, which precludes federal courts from considering questions "that cannot affect the rights of litigants in the case before them." *C & H Nationwide, Inc., v. Norwest Bank Texas N.A.*, 208 F.3d 490, 493 (5th Cir. 2000) (cleaned up). Under the mootness doctrine, the "controversy"

posed by the plaintiff's complaint is required to be "live not only at the time the plaintiff files the complaint but also throughout the litigation process." *Rocky v. King*, 900 F.2d 864, 866 (5th Cir. 1990) (cleaned up). As the Supreme Court explained in *Spencer v. Kemna*, "[t]his means that, throughout the litigation, the plaintiff 'must have offered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.'" 523 U.S. 1, 7 (1998) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990)). *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (holding "a federal court has no authority to give opinions upon moot questions or abstract proportions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it") (internal quotation marks and citation omitted). Because all claims challenging the lawfulness and constitutionality of the automatic stay provisions 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c), (d) were rendered moot as of September 9, 2025, Plaintiff's Second Amended Petition for Habeas Corpus—the operative habeas petition—should be dismissed or denied. *See, e.g., McAlpine v. Ridge*, No. 3:04-CV-1236-G, 2004 WL 2389448, at \*5 (N.D. Tex. Oct. 25, 2004) (finding an alien's challenge to the constitutionality of his detention under the automatic stay provision was rendered moot by a change in the basis for the alien's detention such that his detention was no longer under the authority of the automatic stay); *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1031-32 (E.D. Wis. 2007) (finding the lawfulness of automatic stay provision as to the petitioner was rendered a moot issue because the petitioner was no longer detained under the automatic stay; *see also Oyelude v. Chertoff*, 170 F. App'x 366, 367, n.4 (5th Cir. 2006) (finding an alien's challenge to detention was mooted by the issuance of a new administrative decision that resulted in a shift of the government's authority to detain the alien)).

**CONCLUSION**

For the foregoing reasons, Respondents respectfully request that the Court decline to adopt the R&R (Dkt. No. 28) and dismiss or deny Petitioner's Second Amended Petition for Writ of Habeas Corpus (Dkt. No. 18) on mootness grounds.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Baltazar Salazar, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 14<sup>th</sup> day of November, 2025, the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: *s/ Baltazar Salazar*  
**BALTAZAR SALAZAR**  
Assistant United States Attorney