United States District Court
Western District of Texas
San Antonio Division

Armando Becerra Vargas, Petitioner, v. Pamela Bondi, United States Attorney General, *et al*, Respondents.	No. 5:25-CV-01023-FB-HJB

Respondents' Objections to the Report and Recommendation

Respondents file the following objections to the Report and Recommendation issued in this case in support of Petitioner's Writ of Habeas Corpus.

1. Respondents' Objection to Jurisdiction

The Report and Recommendation issued by the Magistrate Judge held that the Court does have jurisdiction to hear and rule on the petition despite Respondent's arguments to the contrary. Respondents object to this finding.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. This statutory interpretation issue is not properly before the district court and must be funneled through the court of appeals. *See SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL 2617973 (D. Minn. Sept. 9, 2025). The Court should sustain Respondent's objection, reject the reasoning regarding jurisdiction found in the Magistrate Judge's Report and Recommendation, and adopt the reasoning of the Court in *SQDC v. Bondi*, No. 25–3348 (PAM/DLM), 2025 WL 2617973 (D. Minn. Sept. 9, 2025).

2. Respondents' Objection Regarding the Report and Recommendations Finding on Applicability of 8 U.S.C. 1225 to the Petitioner.

Petitioner argues that he is entitled to a bond hearing and is not subject to mandatory detention because his detention should be governed by 8 U.S.C. § 1226 and not § 1225. ECF No. 1 at ¶¶ 21-25. The Magistrate Judge's Report and Recommendation comes to the same conclusion. Specifically, the Report and Recommendation relies on analysis by other courts. ECF No. 18 at 7-8.

In the absence of controlling authority from the Fifth Circuit, this Court should follow the multitude of district courts that have carefully interpreted the plain language of the INA and found aliens like the Petitioner subject to mandatory detention under § 1225(b)(2). Although the Government acknowledges that there are district court decisions that hold to the contrary, it bears mention that (1) none of these decisions are binding, (2) *Hurtado* carries far more weight considering the BIA's subject-matter expertise on the matter and the thoroughness of its analysis, and thus contrary district court rulings have comparatively miniscule persuasive weight, and (3) as Judge Devine noted, many of the courts that have ruled against the Government "appear to defer substantially to each other."[1] *Olalde*, 2025 WL 3131942, at *1. Many district courts have adopted the Federal Respondents' and the BIA's interpretation, and more are likely to follow in the wake of *Hurtado*. *See, e.g.*, *Sandoval*, 2025 WL 3048926 (ruling in favor of the Government on this issue); *Garibay-Robledo*, 1:25-CV-00177, ECF No. 9 (Exh. 1) (same); *Olalde*, 2025 WL 3131942;

[1] With this statement, what Judge Devine was getting at is the reality that many of the judges who have ruled on this issue have not actually critically looked into the issue and instead have opted to defer to the majority. Of course, this deference then snowballs, as subsequent courts are in turn even more inclined to defer as the ratio grows more lopsided. But as put by Judge Devine, "[w]hat governs this case is the text of the statute, not what other district courts have concluded." 2025 WL 3131942 at *1.

Vargas Lopez v. Trump, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (same); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (same); *accord Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (albeit in a different context, but adopted the reasoning at issue here when it stated that a Brazilian national who entered the country illegally in 2005 "remains an applicant for admission" in 2025); *Cabanas v Bondi*, 2025 WL 317331 (W.D. La. November 13, 2025) ("**Simply put, the statutory text of § 1225(b)(2)(A) governs in this case.**" [emphasis added]).

The Government would urge the Court to rely on these decisions, which critically assessed the statutory question, and adopt their well-reasoned and textually faithful analysis.

Additionally, the Report and Recommendation goes on to expand on 2 points. *Id.* Specifically, the Report and Recommendation finds that Respondents interpretation does not accord with the plan text. ECF No. 18 at 8-9.

As discussed above many Courts have held the opposite. For instance, in *Garibay-Robledo*, 1:25-CV-00177, ECF No. 9, Judge Hendrix in the Northern District of Texas squarely agreed with the Government, observing that "the plain language of the mandatory-detention provision weighs *heavily against* the petitioner's assertion that he is subject only to discretionary detention," and that the argument to the contrary "*flatly contradicts* the statute's plain language and the history of legislative changes enacted by Congress." In so doing, Judge Hendrix's analysis agrees with virtually all (if not altogether all) of the points raised in this case by Respondents. The other district courts similarly reached their holdings based on the same arguments presented herein.

Secondly, the Report and Recommendation argues that the Supreme Court's discussion in *Jennings* calls Respondent's position into question. ECF No. 18 at 9. The Report and Recommendation does not properly lay out the Supreme Court's position in *Jennings*. In *Jennings*,

the Supreme Court did not state that § 1225(b) applies *only* to aliens seeking entry into the United States; instead, the Court stated that "§ 1225(b) applies *primarily* to aliens seeking entry into the United States". *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (emphasis added); *see also Vargas Lopez v Trump*, No. 8:25-CV-00526, 2025 WL 2780351, at *9 n.5 (D. Neb. Sept. 30, 2025). In fact, the quote from *Jennings* in the Report and Recommendation also supports this position. The quote in the Report and Recommendation states as follows:

> U.S. immigration law authorizes the Government to detain **certain** aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c). [emphasis added]
>
> ECF No. 18 at 9.

The Court in *Jennings* clearly accords with Respondent's interpretation. § 1225 authorizes the mandatory detention of **certain** aliens. Petitioner is a "certain alien", an applicant for admission, as defined by the INA and the Court in *Jennings*. In *Jennings*, the Court discussed the definitions of each of the "certain" aliens and it agreed that "applicants for admission fall into one of two categories…" 583 U.S. at 287. The Court goes on to explain that the two categories are §1225(b)(1) and (2). Additionally, it held that section 1225(b)(2), the section that applies to Petitioner, "is broader. It serves as a catchall provision that applies to **all** applicants for admission not covered by § 1225(b)(1)." *Id.* Respondents note that the Court in *Jennings* is not restricting §1225(b)(2)'s application to only aliens apprehended at the border. It applies to **all** applicants for admission.

Petitioner is in removal proceedings because he has not been admitted or paroled into the United States. ECF No. 1 at ¶14. §1225(a) defines an applicant for admission as " an alien present

in the United States who has not been admitted or who arrives in the United States…shall be deemed…an applicant for admission". Under the plain text of §1225(a)(1) petitioner meets the definition of an applicant for admission. There isn't a temporal restriction that removes Petitioner from this definition by the nature of how long they have been in the country. Petitioner meets this definition; therefore, he is subject to detention pursuant to §1225(b)(2), and the analysis of the statute in *Jennings* would support that. 583 U.S. at 287.

For these reasons, Respondents urge the Court to sustain its objections and not adopt the Report and Recommendation ECF No. 18.

Respectfully submitted,

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