IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

NABOR DE SANTAMARIA DE JESUS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:25-CV-1200-MJT**
	§	
COOKE COUNTY SHERIFF/WARDEN COOKE COUNTY JAIL, ACTING DALLAS FIELD OFFICE DIRECTOR, US IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; US DEPARTMENT OF HOMELAND SECURITY, KRISTI NOEM, SECRETARY; AND US ATTORNEY GENERAL, PAMELA BONDI;	§	
	§	
Defendants.	§	
	§	

REPORT AND RECOMMENDATION

Petitioner, Nabor De Santamaria De Jesus, is currently detained in state custody in Cooke County Jail in Gainesville, Texas with an ICE detainer. A petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 is currently on file in this district challenging his detention. The Respondents filed a Response (doc. #4). The Petitioner filed a Reply (doc. #5). The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

BACKGROUND

Petitioner is Mexican citizen who entered the United States as a child with his mother who was a lawful permanent resident. His mother filed a petition for a visa for him in 1996 but passed away prior to a determination on the application. Petitioner was removed from the United States

in 1998 after expedited removal proceedings occurred on the same date he was found to have arrived near the Eagle Pass, Texas International Land Bridge. Petitioner was again found in the United States in 2002 after being arrested for aggravated assault with a deadly weapon. In 2003, Petitioner was found entering the United States wading across the Rio Grade River and was removed two days later. In 2008, Petitioner's I-130 petition was approved but was later revoked in 2020. In 2021, he was charged with a liquor violation. In 2022, Petitioner was charged with driving while intoxicated then removed. In 2023, his DWI charge was amended to driving while intoxicated with a blood alcohol content of greater than 0.15. In 2025, he was arrested on an outstanding warrant for the amended driving while intoxicated charge then interviewed by ICE while in state custody and an immigration detainer is currently in place.

SUMMARY OF ARGUMENTS

Petitioner argues that he is "in custody" under 28 U.S.C. § 2241 because ICE has lodged a detainer and expressly stated its intent to assume custody the moment he is released from state confinement, making federal custody inevitable rather than speculative. He distinguishes his case from Fifth Circuit precedent like *Zolicoffer, Giddings, and Santana*, emphasizing that those cases involved a speculative detainer or convicted criminal aliens seeking to accelerate deportation, whereas he has no convictions and cannot be treated as a criminal based on mere arrests. He states that because ICE's detainer and reinstated removal order ensure imminent transfer, the petition is ripe, and habeas jurisdiction is necessary to prevent his removal before judicial review can occur, consistent with the *Hensley* and *Jones* cases. Petitioner further asserts that the Fifth Amendment protects his substantive liberty interest against arbitrary civil detention and that ICE failed to consider less-restrictive alternatives under § 1226(a), despite his alleged clean record, deep community ties, and U.S.-citizen children. Finally, he contends that because he was brought to the United States as a minor, equity strongly favors relief. He therefore asks the court to retain

jurisdiction, prevent removal without notice, and allow his habeas petition to be heard on the merits.

Respondents argue that the habeas petition must be dismissed because Petitioner is not "in custody" of the federal government within the meaning of 28 U.S.C. § 2241. They assert that the proper respondent in a habeas case is the petitioner's immediate physical custodian, and here Petitioner is held solely by the State of Texas on pending state criminal charges—not by ICE. Although ICE has lodged an immigration detainer, Respondents emphasize that a detainer is merely an administrative notice requesting advance notification of release and does not place Petitioner in federal custody. Citing Fifth Circuit precedent, they argue that an ICE detainer does not create the "custody" required for habeas jurisdiction. They further rely on 8 U.S.C. § 1231(a)(5) to note that Petitioner is removable once his prior removal order is reinstated but reiterate that this does not create federal custody while he remains confined on state charges. Because Petitioner is not currently held by federal authorities, Respondents contend that he cannot invoke § 2241 and therefore fails to state a viable cause of action, requiring dismissal of the petition.

DISCUSSION

The "in custody" requirement for a habeas action is a jurisdictional prerequisite, and a petitioner must be in custody at the time the petition is filed for a federal district court to have jurisdiction over a § 2241 petition. *Ellis v. United States*, No. 6:24CV099, 2024 WL 4941318, at *1 (E.D. Tex. Oct. 15, 2024), *R & R adopted*, 2024 WL 4933328 (E.D. Tex. Dec. 2, 2024) (citing *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989)). "Although an applicant need not be in actual physical custody to pursue a habeas action, there must be some type of restraint on the liberty of a person." *Id.* (quoting *Merlan v. Holder*, 667 F.3d 538, 539 (5th Cir. 2011)).

Petitioner cites to *Jones* and *Hensley* for the proposition that he is "in custody" because ICE detention is inevitable for him. *Jones v. Cunningham*, 371 U.S. 236 (1963); *Hensley v. Municipal Court*, 411 U.S. 345 (1973). In *Jones*, the Supreme Court considered whether a state prisoner released on parole was still "in custody" for purposes of federal habeas corpus jurisdiction under 28 U.S.C. § 2241. *Jones*, 371 U.S. at 243. The Court held that a parolee is still "in custody" for purposes of habeas corpus because the restrictions and conditions imposed by parole substantially limit liberty in ways not shared by the general public due to his parole conditions. *Id.* In *Hensley*, the Supreme Court addressed whether a person released on his own recognizance pending execution of a criminal sentence is "in custody" for purposes of federal habeas corpus jurisdiction under 28 U.S.C. § 2241. *Hensley*, 411 U.S. at 351-352. The Court held that because the petitioner remained under court order, was required to appear at all times, was prohibited from leaving the jurisdiction, and was subject to immediate arrest if he violated any conditions or if his appeal failed, he was subject to substantial restraints on liberty and therefore was "in custody" for habeas purposes. *Id.*

The Fifth Circuit, however, has squarely addressed the precise issue of whether an ICE detainer puts a petitioner "in custody." *Zolicoffer v. U.S. Department of Justice*, 315 F.3d 538 (5th Cir. 2003). In *Zolicoffer*, the court held that state prisoners subject only to an ICE detainer are not "in custody" of federal immigration authorities for purposes of habeas corpus under 28 U.S.C. § 2241. *Id.* at 540-541. The court explained that an ICE detainer is merely an administrative notice requesting that state officials inform ICE prior to the prisoner's release. *Id.* Therefore, the court sided with the majority of circuit courts that have considered this issue and held that prisoners are not in custody simply because a detainer is lodged against them. *Id.*

Like *Zolicoffer*, the Petitioner here is not subject to any present restraint imposed by federal immigration authorities. The ICE detainer does not empower ICE to control Petitioner, alter the

conditions of his state confinement, or impose any present restrictions on his liberty. Instead, a detainer merely expresses ICE's future interest in assuming custody once the state's authority ends. Because ICE has not taken Petitioner into custody, he is not "in custody" under the detainer for purposes of § 2241 jurisdiction. *Id.*; *Tchouala v. Swaney*, No. CV H-25-1450, 2025 WL 1238375, at *2 (S.D. Tex. Apr. 29, 2025). Although Petitioner has a prior order of removal, that order has not yet been reinstated. ICE must determine whether he unlawfully entered the country and verify his identity then execute an order of reinstatement once he is in their custody. *See e.g. Zamora-Vallejo v. Holder*, 378 F. App'x 386, 391 (5th Cir. 2010); 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8.

Accordingly, to the extent Petitioner seeks to challenge the ICE detainer or to obtain release from future federal immigration custody, his claims are premature and this court lacks jurisdiction to consider them at this time.

RECOMMENDATION

For the reasons discussed herein, this court recommends that the Petition for a Writ of Habeas Corpus be dismissed without prejudice to refiling if and when ICE assumes actual custody.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(c), each party to this action has the right to file objections to this report and recommendation. Objections to this report must: (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, and (3) be served and filed within fourteen (14) days after being served with a copy of this report. *See* 28 U.S.C. § 636(b)(1)(c) (2009); FED. R. CIV. P. 72(b)(2). A party who objects to this report is entitled to a *de novo* determination by the United States district judge of those proposed findings and recommendations to which a specific objection is timely made. *See* 28 U.S.C. § 636(b)(1) (2009); FED R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this report, within fourteen (14) days of being served with a copy of this report, bars that party from: (1) entitlement to de novo review by the United States district judge of the findings of fact and conclusions of law, *see Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States district judge, *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, at 1428–29 (5th Cir. 1996) (en banc).

SIGNED this the 26th day of November, 2025.

Christine L Stetson
UNITED STATES MAGISTRATE JUDGE