

United States District Court
Western District of Texas
San Antonio Division

Eliezer Antonio Salazar Crespo,
Petitioner,

v.

Kristi Noem, *et al*,
Respondents.

No. 5:25-CV-01485-FB-RBF

Federal Respondents' Objections to the Report and Recommendation

Federal¹ Respondents file the following objections to the Report and Recommendation issued in this case in support of Petitioner's Petition for Writ of Habeas Corpus. *See* ECF No. 13.

1. Respondents' Objection to Factual Findings

Respondents object to the factual finding regarding an immigration court ruling dated December 2, 2025, and referencing ECF No. 8-3. *See* ECF No. 13, at 3. The redacted order was submitted by Petitioner purporting to be an order pertaining to Mr. Salazar Crespo. However, the unredacted portions of the A number and the name do not match those of the Petitioner in this case. In fact, the immigration judge, Stuart Alcorn, entered an order of removal for Petitioner on December 2, 2025, (*see* Exh. A. Order, redacted) and entered an order denying a custody redetermination based on the removal order and the prior denial of bond request. *See id.*

2. 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

¹ The Department of Justice represents only federal employees in this action.

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 Respondents’ 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).

3. Respondents’ Objection Regarding the Report and Recommendation’s Finding on the showing of TRO Requirements.

Respondents object to the Magistrate Judge’s findings that Petitioner has demonstrated a clear showing of each of the requirements to warrant a temporary restraining order. First, Respondents object to the finding of the likelihood of success on the merits. The Magistrate Judge did not address the statutory arguments and instead relied upon the procedural due process argument presented by Petitioner, and the reasoning found in another court opinion in the Western District of Texas, in *Hernandez-Fernandez v. Lyons, et al*, No. 5:25-cv-773-JKP-ESC (W.D. Tex. Oct. 21, 2025), due to “materially identical circumstances.” See ECF No. 13, at 4. Based on this, the Magistrate Judge found Petitioner has demonstrated a likelihood of success on the merits. However, there are material differences in the present case due to the order of removal entered on December 2, 2025, and the custody redetermination order entered on December 3, 2025, that require a different outcome. For the reasons set forth in Respondents’ response to the petition and as set forth below, Petition should remain in custody during the pendency of these proceedings.

Further, once the removal order becomes final, Petitioner’s custody may continue. “When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the Government ordinarily secures the alien’s removal during a subsequent 90-day statutory ‘removal period,’ during which time the alien normally is held in custody.” *Zadvydas*

v. *Davis*, 533 U.S. 678, 682 (2001).

4. Respondents' Objection Regarding the Finding on the likelihood of success on the merits.

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 ¶¶ 5, 42. Even prior to the order of removal in this case, in the absence of controlling authority from the Fifth Circuit, this Court should follow the district courts that have carefully interpreted the plain language of the INA and found aliens like 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 Divine noted, many of the courts that have ruled against the Government "appear to defer substantially to each other."² *Olalde v. Noem*, No. 1:25-cv-168-JMD, 2025 WL 3131942, at *1 (E.D. Mo. Nov. 10, 2025). 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 v. Acuna*, No. 6:25-cv-1467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (ruling in favor of the Government on this issue); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177-H, 2025 WL 3264478, (N.D. Tex. Oct. 24, 2024) (same); *Olalde*, 2025 WL 3131942; *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

² As put by Judge Divine, "[w]hat governs this case is the text of the statute, not what other district courts have concluded." 2025 WL 3131942 at *1.

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*, No. 4:25-cv-4830, 2025 WL 317331 (S.D. Tex. Nov. 13, 2025) (“**Simply put, the statutory text of § 1225(b)(2)(A) governs in this case.**” [emphasis added]); *see also P.B. v. Bergami*, No. 3:25-cv-2978-O (N.D. Tex. Dec. 13, 2025) (O’Connor, C.J.).

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.

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.

In addition, 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). The *Jennings* opinion 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]

583 U.S. at 289.

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.

Section 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.

Because Petitioner cannot demonstrate a substantial likelihood of success on the merits, a temporary restraining order is not warranted, and the motion should be denied.

5. Conclusion

For these reasons, Respondents urge the Court to sustain its objections and not adopt the

Magistrate Judge's Report and Recommendation.

Respectfully submitted,

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