

United States District Court
Western District of Texas
San Antonio Division

Behnaz Soehiliestahbanati,
Petitioner,

v.

Todd Blanche¹, *et al*,
Respondents.

No. 5:26-CV-154-FB-RBF

Respondent's 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. Respondent's Objection to the Magistrate Court's Finding Regarding Foreseeability of Removal

Respondents reassert all arguments presented in ECF No. 8.

2. Respondent's Objection Regarding Restrictions on Re-Arrest and Re-Detention.

The Magistrate Court is correct that Respondent's did not challenge this Court's jurisdiction to rule on the habeas petition. ECF No. 16 at 3-4. However, Respondent's would challenge this Court's jurisdiction to enter an order outside the scope of relief offered by habeas proceedings. The only relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020).

The Magistrate Court's recommendation to restrict DHS's ability to re-arrest and re-detain is unnecessary and encroaches on the Executive Branch's authority to make discretionary

¹ Acting Attorney General Todd Blanche is substituted automatically pursuant to Federal Rule Of Civil Procedure 25(d).

decisions regarding arrests. The Supreme Court has also held this to be true.

In *United States v. Texas*, the Supreme Court reaffirmed that “the Executive Branch—not the Judiciary—makes arrests....”. 599 U.S. 670, 678 (2023) (citing *United States v. Nixon*, 418 U.S. 683, 693 (1974)(“the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case”.)) This decision had to do with enforcement policies and decisions not to arrest, however the *dicta* regarding arrest decisions and authority is relevant. The Supreme Court later affirmed that “enforcement discretion also extended to the immigration context because “the Executive’s enforcement discretion implicates both domestic law enforcement priorities and foreign policy objectives” *Id.* at 679 (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 490-491 (1999). Additionally, the Supreme Court has held that the decision to even pursue removal is also squarely within the executive. *Arizona v. United States*, 567 U.S. 387, 396, 132 S.Ct. 2492, 183 L.Ed.2d 351 (2012) (“Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all”).

Additionally section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of an alien arising from the *decision or action* by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] *execute removal orders against any alien under this chapter.*” 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) applies “to three discrete actions that the Attorney General may take: [the] ‘*decision or action*’ to ‘commence proceedings, adjudicate cases, or *execute* removal orders.’” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

DHS’s future decision on when to arrest or detain Petitioner to remove petitioner would be an “decision or action” to “execute” a removal order, and *Reno* makes it clear that this Court lacks

jurisdiction to review or restrict said decisions. *Id.*

Further, the restrictions set forth by the Magistrate Court fail to take into account the plethora of variables that take place during arrest decisions. For example, the Report and Recommendation recommends that “Petitioner should not be re-arrested and re-detained due to her removability to a third country unless and until an agreement from that third country to accept Petitioner *has already been secured*.” ECF No. 16 at 10. This restriction doesn’t take into account a potential violation of Petitioner’s supervision conditions such as an arrest, conviction, failure to report, or other conduct.

Lastly, this recommendation is unnecessary and outside the scope of relief sought pursuant to this habeas petition.

3. Respondents Objection Regarding the Notice Provided to Petitioner.

Respondents reassert all arguments presented in Respondent’s Response ECF NO. 8. Petitioner was given notice of the revocation. ECF No. 8-1 at 1.

For these reasons, Respondents urge the Court to sustain its objections and not adopt the Report and Recommendation ECF No. 16.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Fidel Esparza III
Fidel Esparza III
Assistant United States Attorney
TX Bar No. 24073776
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (phone)
(210) 384-7026 (fax)
Fidel.esparza@usdoj.gov

Attorneys for Defendants