

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-01121 MJD-JFD

Henry Antonio Villeda Posada.,

Petitioner,

v.

Pamela Bondi, et al.,

Respondents.

**RESPONDENTS'
OBJECTIONS TO REPORT
AND RECOMMENDATION**

Respondents submit these Objections to the Report and Recommendation (R&R) filed on February 11, 2026, ECF No. 8. Respondents acknowledge these objections are filed one day after the deadline set in the R & R. Respondents' undersigned counsel was not able to meet the deadline due to the press of other business over the past few days, principally the preparation of filings in habeas cases. Respondents respectfully request that the Court consider these objections.

1. Habeas Jurisdiction.

Respondents object to the recommendation that the Court has subject matter jurisdiction. That recommendation is anchored on a premise that Respondents had violated the Court's Order dated February 6, 2026, ECF No. 3. Respondents respectfully maintain that premise is not based on record evidence and that the R & R incorrectly recommends that the Court should reject Respondents' jurisdictional argument.

In their return, Respondents suggested the Court lacked jurisdiction based on the record facts and law. The factual chronology supporting the jurisdictional argument is as follows:

Petitioner entered and was admitted to the United States in 2024 on a visa. He overstayed that visa. Immigration officials detained him on February 3, 2026. ECF No. 1, ¶¶ 7, 12, 13, 15. ICE transferred him to El Paso, Texas on February 5, 2026 and the next day, February 6, 2026, transferred him to Karnes, Texas. On February 6, 2026, DHS commenced removal proceedings against him in Texas.

Petitioner filed this habeas petition in Minnesota on February 6, 2026. ECF No. 1. The Court entered its initial and only Order on February 6, 2026. ECF No. 3. Respondents' timely filed their Return on Sunday, February 8, 2026. ECF Nos. 5 and 6. Petitioner did not quibble with these undisputed facts.

In their return, Respondents argued that, on the date Petitioner filed his petition in Minnesota, Petitioner was detained in Texas, not Minnesota. Therefore, this Court never obtained subject matter jurisdiction over this habeas case. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *Wyatt v. United States*, 574 F.3d 455, 460 (7th Cir. 2009); *Fisenko K. v. Ray*, No. 25-cv-4654-PJS-DLM, ECF No. 17 (D. Minn. order filed Dec. 17, 2025); *Garcia v. London*, 2025 U.S. Dist. LEXIS 261751, at *3 (D. Neb. Dec. 10, 2025). Since this petition in this case was filed on February 6, 2026 when Petitioner was in Texas, Respondents argued this Court should dismiss the petition for lack of subject matter jurisdiction or transfer the petition to the Western District of Texas. *See* 28 U.S.C. § 1406(a); Fed. R. Civ. P. 12(b)(1); *Rumsfeld*, 542 U.S. at 443.

Respondents did not violate any court order by transferring Petitioner to Texas on February 5, 2026. At the time that transfer occurred on February 5, 48 hours had elapsed since Petitioner's apprehension and it would be 24 hours before the petition was filed and

the Court entered its initial Order on February 6, 2026. ECF No. 3. Respondents did not and could not violate a court order that was entered a day after the transfer to Texas.

Nor were Respondents in violation of the Court's Order when Respondents filed their response on Sunday, February 8, 2026. Respondents jurisdictional argument was based solely on the fact that Petitioner was in Texas when his counsel filed the petition on his behalf. Respondents filed their response about 7 p.m. on Sunday, February 8, 2026. That response did not include information about the exact whereabouts of Petitioner on Sunday, February 8, 2026, or Respondents' arrangements to return Petitioner to Minnesota, because the undersigned did not have that knowledge, one way or the other.

The procedural method or vehicle by which Respondents raised this jurisdictional issue was perfectly proper and appropriate under the circumstances and the federal and local rules of this Court. Respondents raised the issue in the Return to the Order to Show Cause which was filed timely under the OTSC. The premise of the argument is that this district court did not have jurisdiction at the time the petition was filed 48 hours after the apprehension of Petitioner and 24 hours after the transfer to Texas. Respondents timely raised the jurisdictional issue in their timely filed return to the habeas petition and the OTSC (which included a restraining order issued *ex parte*). Jurisdiction may be raised at any time, Fed. R. Civ. P. 12(h). Given these premises, there is no factual or legal basis to say that Respondents "admitted" to violating a court order. Any reference to or reliance upon a failure to "seek permission" under LR 7.1(j) to suggest that Respondents somehow waived their jurisdictional argument would be inaccurate and inapposite.

The undersigned received an email today, February 14, 2026, that Petitioner remains in Karnes, Texas and that ICE/ERO is working on returning Petitioner to Minnesota as soon as practicable.

2. The Merits.

This case is different from the typical of the 1225/1226 cases filed recently in this district. In most of those cases, the Petitioners had entered the United States without inspection, admission, or parole. In this case, Petitioner was admitted on a visa. He overstayed that visa and was apprehended, detained, transferred, and placed in removal proceedings on the charge of being a visa overstay. In other words, Petitioner appears to be “bond eligible” and his removal proceedings were initiated in and are being conducted in Texas. There is no record evidence as to what bond determination was made, whether Petitioner requested a bond redetermination, whether the Immigration Court has conducted a bond hearing, or the result of any such bond hearing. It cannot be presumed that “Respondents have refused to provide [Petitioner] a bond hearing.” R & R, ECF No. 8 at 2. Given the immigration charges, it can be assumed the Immigration Court is handling those proceedings correctly. Therefore, regardless of how the Court rules on the jurisdictional issue, the Court should deny the pending habeas petition.

Finally, Respondents object to the reference in the R & R about the potential availability of attorney’s fees under EAJA upon motion after judgment. While the advice may be accurate, its presence in an R & R is unnecessary. Petitioner is represented by experienced counsel who is or should be aware of the potential for a fee award. Moreover, the unnecessary language suggests a predisposition on the questions of whether the

government's positions in this case were substantially justified or whether special circumstances would make an award unjust.

CONCLUSION

For these reasons and those stated previously, the Court should overrule the R&R and either dismiss the petition or transfer the petition to Texas. If the Court retains jurisdiction, the Court should deny it without prejudice to refiling based on updated facts about the proceedings in Immigration Court.

Dated: February 14, 2026

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