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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
MINNEAPOLIS DIVISION

Petitioner, **Jose Jobell Reyes Diaz**	Case No. 0:26-cv-2839
v.	**PETITIONERS OBJECTIONS TO THE REPORT AND RECOMENDATION**
Jail Administrator, Kandiyohi Jail; **Peter Berg,** Director of St. Paul Field Office, U.S. Immigration and Customs Enforcement; **Markwayne Mullin,** Secretary of the U.S. Department of Homeland Security; and **Todd Blanche** Attorney General of the United States, in their official capacities,	Case No.
Respondents.	

INTRODUCTION

Petitioner respectfully objects to the July 15, 2026 Report and Recommendation ("R&R"). The R&R recommends denying the Petition for Writ of Habeas Corpus and the Motion for Temporary Restraining Order. These recommendations misapply controlling law, overlook critical facts, and fail to address constitutional limits on § 1225(b)(2) detention.

Petitioner also acknowledges that these Objections are being filed one day after the deadline set forth in the Notice accompanying the R&R. Good cause exists to accept the filing. The delay was minimal, non-prejudicial, and resulted from excusable circumstances related to counsel's sickness and access to a server, and the need to ensure compliance with Local Rule 72.2(c). Courts in this District routinely accept slightly untimely objections where the delay is brief and causes no prejudice. To the extent necessary, Petitioner requests relief under Fed. R. Civ. P. 6(b)(1)(B), as the one-day delay constitutes excusable neglect. Petitioner respectfully asks the Court to consider these Objections in full.

I. The R&R Misapplies Avila and Fails to Address DHS Misclassification.

The R&R relies on *Avila v. Bondi*, which held § 1225(b)(2) "applies to aliens in the nation's interior as well as at the border." *Avila v. Pamela Bondi*, No. 25-3248 (8th Cir. 2026). But the R&R does not analyze whether Petitioner is properly classified as an "arriving alien" at all. Petitioner has lived in the United States since 2014, is married to a lawful permanent resident, and has both an approved I-130 and an approved provisional unlawful presence waiver—facts the R&R acknowledges.

DHS classification is reviewable and may be corrected when erroneous. *Matter of A-M-*, 25 I&N Dec. 66 (BIA 2009); Matter of Quilantan, 25 I&N Dec. 285 (BIA 2010). Detention authority depends on proper statutory classification. *Jennings v. Rodriguez*, 138 S. Ct. 830, 842–47 (2018). The R&R does not address this threshold issue.

II. The R&R Treats Zadvydas's Six-Month Presumption as a Hard Minimum

The R&R states detention cannot be unreasonably prolonged because "six months was a presumptively reasonable time." But *Zadvydas v. Davis,* 533 U.S. 678, 701 (2001), establishes a presumption—not a minimum. Courts must evaluate whether detention is reasonably related to its purpose. *Clark v. Martinez*, 543 U.S. 371, 384 (2005).

Detention may become unconstitutional before six months when removal is not reasonably foreseeable. *Ly v. Hansen,* 351 F.3d 263, 271–72 (6th Cir. 2003). The R&R itself notes that "removal may not be imminent." Detention here is not serving the statutory purpose of assuring presence at removal; it is preventing Petitioner from completing the consular process necessary for removal.

III. The R&R Fails to Address the Constitutional Problem Created by Detention Blocking Consular Processing

Petitioner's provisional waiver was approved on August 1, 2025. The immigrant visa process requires him to depart the United States for a consular interview. ICE detained him before he could depart, and continued detention prevents the interview from occurring.

Detention must be reasonably necessary to secure removal. *Zadvydas*, 533 U.S. at 699–700. Detention that prevents a noncitizen from pursuing lawful immigration relief is unconstitutional. *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017). The R&R does not address this defect.

IV. The R&R Ignores the Government's Lack of Evidence of Danger or Flight Risk

The government presented no evidence that Petitioner is dangerous or a flight risk. Civil detention without evidence of dangerousness violates due process. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Detention must be tied to a legitimate regulatory purpose, not punishment. Zadvydas, 533 U.S. at 690–91.

Petitioner has lived in the U.S. for over a decade, has a U.S.-citizen/LPR family, has no criminal conviction, and is pursuing lawful immigration relief. The R&R does not address the absence of evidence justifying detention.

V. The R&R Applies an Incomplete TRO Standard

The R&R denies the TRO solely because Petitioner is "unlikely to succeed on the merits." TRO analysis requires likelihood of irreparable harm, balance of harms, and public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981).

Detention prevents Petitioner from completing the consular process necessary to obtain lawful permanent residence—an irreparable harm recognized in *Hernandez v. Sessions*, 872 F.3d at 995. The R&R's failure to apply the full TRO standard is legal error.

VI. Conclusion

Petitioner respectfully requests that the District Judge:

1. Reject the Report and Recommendation;
2. Grant the Petition for Writ of Habeas Corpus;
3. Order Petitioner's immediate release, or in the alternative,
4. Order a bond hearing before an immigration judge; and
5. Grant any other relief the Court deems just and proper.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 72.2(c), I certify that this document complies with the word and line limits applicable to objections to a Report and Recommendation. This document contains fewer than the maximum number of words permitted under the Rule. I further certify that this document was prepared using a proportionally spaced font and complies with all formatting requirements of the Local Rules.

Respectfully submitted, Dated: July 23, 2026

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