UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-2839-NEB-JFD

Jose R.,

Petitioner,

v.

Todd Blanche et al.,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S OBJECTIONS TO THE REPORT AND RECOMMENDATION

On July 15, 2026, Magistrate Judge John Docherty recommended that this Court deny Petitioner's habeas petition and Motion for a TRO. Doc. No. 11 (hereinafter "R&R"). As the R&R indicated, objections were due by July 22, 2026. R&R at 6. Petitioner filed an untimely sealed[1] objection on July 23, 2026. Doc. No. 12 (hereinafter "Objection"). For the reasons explained below and in Respondents' initial response, the Court should overrule Petitioner's objections, adopt the R&R in its entirety, and deny this habeas petition.

Untimely Objections Should be Overruled

As an initial matter, Petitioner's objections were untimely. And Petitioner has failed to demonstrate "excusable neglect" that justifies an after-the-fact extension of his deadline under Federal Rule of Civil Procedure 6(b). That is reason enough to ignore Petitioner's

[1] Petitioner's counsel indicated that the filing was sealed in error, and upon request provided undersigned a copy of the filing at 4:51 p.m. on July 23, 2026, which was approximately 17 hours after the deadline to file an objection.

objections and review the R&R only for clear error. LR 72.2(a)(3)(A).

Objection is Wrong on the Merits

Timeliness issues aside, the Objection fails on the merits.

The Objection suggests that R&R relies too heavily on the binding precedent of *Avila*. Objection at 2 (citing *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026)). Respondents agree with the R&R and argue that the Court should rely on binding precedent in *Avila*. Specifically, Respondents note that that like other applicants for admission to the U.S. whose legal status is governed by 8 U.S.C. § 1225, Petitioner is subject to mandatory detention until the end of his removal proceedings.

The Objection argues that the R&R misapplied *Zadvydas* and suggested that detention of 20 days is unreasonable. Objection at 3 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). Respondents maintain that Petitioner is subject to mandatory detention, and the six months of detention referenced in *Zadvydas* is inapplicable in the case of an alien subject to mandatory detention until the conclusion of their removal proceedings under 8 USC § 1225.[2] Doc. No. 8 (hereinafter "Response") at 4-5.

The Objection fails to persuasively argue that Petitioner's provisional waiver or lack of a bond hearing is relevant to aliens, like Petitioner, who are subject to mandatory detention under 8 USC § 1225. Contrary to Petitioner's suggestion, Petitioner is suffering no violation of his substantive or procedural due process rights. Detention during

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[2] In other words, Respondents note that *Zadvydas* is applicable only in the realm of aliens who have a final order of removal. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (Court reading an implicit limitation into 8 U.S.C. § 1231(a)(6) into how long a noncitizen can be detained pending removal, and that a detention for six months or less is presumptively constitutional.).

immigration proceedings is a constitutionally permissible part of the process, and a lack of a bond hearing or analysis of Petitioner's provisional waiver does not change that outcome. Petitioner has never been lawfully admitted, and the Due Process Clause does not require any additional procedures beyond what Congress provided.

TRO Should be Denied

R&R is correct to argue that Petitioner's TRO should be denied, because Petitioner is not likely to succeed on the merits. R&R at 6; *contra* Objection at 4 (arguing R&R did not address all factors from *Dataphase Sys. v. C L Sys.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc)). A party seeking a TRO must establish that he is likely to succeed on the merits. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see also *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013) ("While no single factor is determinative, the probability of success factor is the most significant." (internal quotation marks and citations omitted).) Thus, finding that the Petitioner is unlikely to succeed on the merits is a sufficient reason to deny the TRO.

Respondents also note that Petitioner is not suffering irreparable harm, and a TRO would cause harm to the government.

There is no threat of irreparable harm in the absence of relief. In the absence of an injunction, Petitioner will be subject to mandatory detention. Furthermore, the strength of Petitioners' liberty interest is significantly diminished. After all, "an alien detained under §1226(c)"—or §1225(b)(2)(A)—"'has the keys in his pocket' and can 'end[] his detention immediately' by withdraw[ing] his defense…" *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999). So if Petitioner actually desired to be "free[] from imprisonment,"

Petitioner need only ask, and the Government will allow Petitioner to enjoy the freedom from detention that Petitioner had before the illegal entry.

The temporary restraining order that Petitioner seeks will cause harm to the government. His proposed order would hinder ICE's ongoing removal efforts. The government would also incur costs associated with supervising Petitioner outside of detention and costs associated with re-detaining him later to carry out his removal. Finally, there is a strong public interest in the efficient administration of the nation's immigration laws and in the removal of a noncitizen who was convicted numerous times. As with the first *Dataphase* factor, the remaining factors weigh heavily against entering emergency injunctive relief.

CONCLUSION

This Court should follow the Eighth Circuit's reasoning in *Avila*. Respondents respectfully request that the Court adopt the recommendation of the R&R and deny the petition and the TRO.

Alternatively, if this Court is inclined to grant the petition, Respondents request that the Court order a bond hearing rather than order release of Petitioner.

No evidentiary hearing is necessary.

[***signature page follows***]

Dated: July 29, 2026

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