

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 08-cv-00460-REB-MJW

DIMAS ARMANDO DIAZ-HOLGUIN,

Applicant,

v.

PETER KEISLER, Acting Attorney General of the United States,
KEVIN D. ROONEY, Dir. EOIR, Immigration Court, and
MICHAEL CHERTOFF, Secretary, DHS,

Respondents.

**ORDER ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the following: (1) the **Petitioner's Memorandum of Law in Support of Petition for Writ of Habeas Corpus** [#11] filed April 3, 2008; (2) the respondents' **Motion To Dismiss** [#14] filed May 2, 2008; and (3) the magistrate judge's **Recommendation on Respondents' Motion To Dismiss (Docket No. 14)** [#27] filed February 25, 2009. As noted by the magistrate judge, the applicant's memorandum of law [#11] is the applicant's operative pleading. The applicant has not filed a separate application for writ of habeas corpus. I approve and adopt the magistrate judge's recommendation, and I grant the motion to dismiss in part and deny the motion in part.

None of the parties have filed any objections to the magistrate judge's recommendation. Therefore, I am required only to review the recommendation for plain error. *See Morales-Fernandez v. Immigration & Naturalization Service*, 418 F.3d 1116, 1122 (10th Cir. 2005). The recommendation is detailed and well-reasoned. Finding no error, much less plain error, in the magistrate judge's reasoning and recommended

disposition, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the magistrate judge's **Recommendation on Respondents' Motion To Dismiss (Docket No. 14) [#27]** filed February 25, 2009, is **APPROVED and ADOPTED** as an order of this court;

2. That the respondents' **Motion To Dismiss [#14]** filed May 2, 2008, is **GRANTED** as to the applicant's claim concerning his detention by U.S. Immigration and Customs Enforcement;

3. That the **Petitioner's Memorandum of Law in Support of Petition for Writ of Habeas Corpus [#11]** filed April 3, 2008, read as an application for writ of habeas corpus, is **DENIED** as moot as to the applicant's claim concerning his detention by U.S. Immigration and Customs Enforcement;

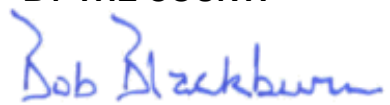
4. That the respondents' **Motion To Dismiss [#14]** filed May 2, 2008, is **DENIED** otherwise ;

5. That as required by 28 U.S.C. § 1631, the applicant's claim challenging the apparent reinstatement of the order of removal concerning the applicant is **TRANSFERRED** to the United States Court of Appeals for the Tenth Circuit; and

6. That this case is **CLOSED**.

Dated March 16, 2009, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge