

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Awil Mohamed,

Civil No. 17-5055 (DWF/DTS)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Secretary Department of Homeland Security;
Jefferson B. Sessions, Attorney General;
Peter Berg, Acting ICE Field Office Director;
and Kurt Freitag, Freeborn County Sheriff,

Respondents.

This matter is before the Court upon Respondents Kirstjen Nielsen, Secretary of the Department of Homeland Security, Jefferson B. Sessions, United States Attorney General, and Peter Berg, Acting ICE Field Office Director's ("Respondents") objections (Doc. No. 12) to Magistrate Judge David T. Schultz's March 23, 2018 Report and Recommendation (Doc. No. 11) insofar as it recommends that: (1) on or before April 20, 2018, ICE shall hold a bond hearing or release Petitioner Awil Mohamed ("Petitioner") from custody on such terms and conditions as it deems necessary to protect the community and ensure Petitioner's appearance; and (2) in the event ICE does not conduct a bond hearing on or before April 20, 2018, that a Writ of Habeas Corpus issue immediately compelling Petitioner's unconditional release.

The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Respondents' objections. In short, this case involves Petitioner's petition for a Writ of

Habeas Corpus seeking release from custody pending removal. In the Report and Recommendation, the Magistrate Judge concluded that Petitioner, having been detained for over 15 months at the time of the Report and Recommendation and not currently being subject to an actionable final removal order, was entitled to a bond hearing to determine whether his release would pose a risk of flight or danger to the community. In reaching this conclusion, the Magistrate Judge carefully analyzed the state of the law on pre-removal detention pursuant to 8 U.S.C. § 1226(c). Respondents object to the Report and Recommendation, arguing that Petitioner's pre-removal detention is proper.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). After this review, the Court finds no reason that would warrant a departure from the Magistrate Judge's recommendations. The Court finds that Petitioner's continued detention has been so prolonged as to require a bond hearing to determine whether his release would pose a risk of flight or danger to the community. The Court also grants Respondents' request for thirty days to implement the Court's order. Therefore, based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Respondents Kirstjen Nielsen, Secretary of the Department of Homeland Security, Jefferson B. Sessions, United States Attorney General, and Peter Berg, Acting

ICE Field Office Director's objections (Doc. No. [12]) to Magistrate Judge David T. Schultz's March 23, 2018 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge David T. Schultz's March 23, 2018 Report and Recommendation (Doc. No. [11]) is **ADOPTED**.

3. Petitioner's Petition for Writ of Habeas Corpus (Doc. No. [1]) is **GRANTED** as follows:

a. Within thirty (30) days of the date of this Order, ICE shall hold a bond hearing or release Petitioner from custody on such terms and conditions as it deems necessary to protect the community and ensure Petitioner's appearance; and

b. In the event ICE does not conduct a bond hearing within thirty (30) days of this order, a Writ of Habeas Corpus shall issue immediately compelling Petitioner's unconditional release.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 25, 2018

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge