

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Wuilmer F.,¹

Case No. 25-CV-3236 (NEB/JFD)

Petitioner,

v.

**REPORT AND
RECOMMENDATION**

Pamela Bondi, Kristi Noem, Department
of Homeland Security, Todd M. Lyons,
Immigration and Customs Enforcement,
Sirce Owen, Executive Office for
Immigration Review, Sam Olson, and
Eric Tollefson,

Respondents.

This matter is before the Court on Wuilmer F.'s Amended Petition for Writ of Habeas Corpus (Dkt. No. 24), filed pursuant to 28 U.S.C. § 2241. The petition has been referred to the undersigned for the issuance of a report and recommendation. Petitioner was in United States Immigration and Customs Enforcement detention when he filed the petition, and one of the key issues raised was whether his detention was governed by 8 U.S.C. § 1225(b)(2) or 8 U.S.C. § 1226(a). Petitioner has since been released from detention under an order for a preliminary injunction issued in this case, and Respondents contend the issue of which section governs his detention is now moot. The Court concludes that the capable-of-repetition-yet-evading-review exception to the mootness doctrine

¹ This District has adopted a policy of using only the first name and last initial of any nongovernmental parties in immigration cases.

applies and that Petitioner's detention fell under 8 U.S.C. § 1226(a), not § 1225(b)(2). The Court therefore recommends that the petition be granted to that extent.

I. Background

Petitioner Wuilmer F. commenced this action by filing a Petition for Writ of Habeas Corpus on August 12, 2025. (Pet., Dkt. No. 1.) Petitioner is a citizen of Honduras who has lived in the United States since 2018. (Pet. ¶¶ 52–53.)

A. Pre-Petition Events

In early July 2025, United States Immigration and Customs Enforcement (“ICE”) determined that Petitioner was unlawfully present in the United States and took him into custody. (Pet. ¶¶ 56, 58.) Petitioner was served with a Notice to Appear, a Form I-200 Warrant of Arrest, and a Form I-286 Notice of Custody Determination. (Pet. ¶¶ 59–60.) The Form I-286 Notice of Custody Determination referred to section 236 of the Immigration and Nationality Act, indicating that Respondents were acting pursuant to 8 U.S.C. § 1226 rather than 8 U.S.C. § 1225. (Pet. ¶ 61.)

The Executive Office for Immigration Review (“EOIR”) held a custody redetermination hearing on August 7, 2025, at which an immigration judge (“IJ”) found that Petitioner was not subject to mandatory custody under 8 U.S.C. § 1225(b)(2)² and that

² Section 1225(b)(2) governs the inspection of applicants for admission and provides in relevant part, “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2).

8 U.S.C. § 1226(a)³ governed his detention. (Pet. ¶¶ 72–75.) The IJ set bond in the amount of \$20,000. (Pet. ¶ 75.) Petitioner was prepared to pay the bond amount, but Respondents did not allow it. (Pet. ¶ 76.)

Petitioner was not released after the IJ’s order. Instead, the Department of Homeland Security (“DHS”) indicated its intent to appeal the custody redetermination and invoked an automatic stay of the IJ’s release order, pursuant to 8 C.F.R. § 1003.19(i)(2).⁴ (Pet. ¶ 77.) The automatic stay was the basis for Petitioner’s detention when he filed his original Petition on August 12, 2025. (*See* Pet. ¶ 77.)

The day after Petitioner filed the Petition, he filed an Emergency Motion for Temporary Restraining Order. (Dkt. No. 5.) Respondents filed a written response in opposition to the motion. (Dkt. No. 14.) The Honorable Nancy E. Brasel, United States

³ Section 1226(a) governs the arrest, detention, and release of a noncitizen pending a decision on whether the noncitizen should be removed from the United States. 8 U.S.C. § 1226(a). Detention is discretionary, and the noncitizen is entitled to a bond hearing. *See id.* 1226(a), (a)(2).

⁴ Section 1003.19(i)(2) provides for an automatic stay in certain cases:

In any case in which DHS has determined that an alien should not be released or has set a bond of \$10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR–43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR–43 is subject to the discretion of the Secretary.

8 C.F.R. § 1003.19(i)(2).

District Judge, held a preliminary injunction hearing on August 18, 2025. (*See* Min. Entry, Dkt. No. 17.)

B. The Preliminary Injunction Hearing

At the beginning of the hearing, Judge Brasel informed the parties that the motion would be treated as one for a preliminary injunction under Rule 65 because Respondents had notice and had filed a written response. (Mot. Hr'g Tr. ("Tr.") at 2, Dkt. No. 23.)⁵ After hearing oral argument from the parties, Judge Brasel determined that 8 U.S.C. § 1252 did not deprive the Court of jurisdiction over Petitioner's habeas claims. (Tr. at 26–29.) Judge Brasel then turned to the Petitioner's request for injunctive relief and assessed whether the four *Dataphase* factors⁶ favored granting a preliminary injunction. (Tr. at 29, 34–35.)

In considering whether Petitioner was likely to succeed on his claim that the automatic stay provision violated his procedural due process rights, Judge Brasel applied the *Mathews v. Eldridge* three-part test.⁷ (Tr. at 30.) For the first factor, Judge Brasel found

⁵ The transcript is currently sealed, but no statement of redaction has been filed.

⁶ The four *Dataphase* factors inform whether a court should issue a preliminary injunction: "(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981).

⁷ In *Mathews v. Eldridge*, the Supreme Court considered (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 335 (1976).

that Petitioner's interest in freedom from physical detention was an elemental liberty interest and that the conditions of Petitioner's detention were the same as criminal incarceration. (Tr. at 30.) Turning to the second *Mathews* factor, Judge Brasel rejected Respondents' position that Petitioner was an applicant for admission and thus fell within the mandatory detention provisions of § 1225(b). (Tr. at 30–31.) Rather, Judge Brasel concluded that Petitioner was a noncitizen who was already present in the United States. (Tr. at 31.) Thus, Petitioner's detention fell under § 1226(a), not § 1225(b)(2). (Tr. at 32.) Judge Brasel explained, "The critical distinction between these two statutes is that noncitizens detained under [§] 1225(b)(2) must remain in custody for the duration of their removal, while those under [§] 1226(a) are entitled to a bond hearing before an IJ at any time." (Tr. at 31.) Judge Brasel next found that the automatic stay provided in 8 C.F.R. § 1003.19(i)(2) created a substantial risk of an erroneous deprivation of Petitioner's interest in being free from arbitrary confinement. (Tr. at 32–33.) The third *Mathews* factor also favored Petitioner: Respondents' interest in persisting with an automatic stay did not outweigh Petitioner's interests and the risk of an erroneous deprivation of those interests. (Tr. at 33–34.) Therefore, Judge Brasel concluded, "all three *Mathews* factors support the petitioner's claim that the automatic stay violates his procedural due process rights under the Fifth Amendment." (Tr. at 34.)

Proceeding to the other *Dataphase* factors, Judge Brasel noted that the loss of liberty was the strongest example of irreparable harm, although if Petitioner were transferred, that would constitute additional harm. (Tr. at 34.) Considering the balance-of-harms and public-

interest factors together, Judge Brasel determined that the balance of harms favored Petitioner. (Tr. 34–35.)

Judge Brasel granted Petitioner’s motion for a preliminary injunction, thus enjoining Respondent Sam Olson “from enforcing the automatic stay provision as to this petitioner during the pendency of the court’s consideration of the petition for writ of habeas corpus.” (Tr. at 36.) Petitioner was ordered to be released and to post bond in accordance with the IJ’s ruling. (Tr. at 36.)

C. Post-Hearing Proceedings

Petitioner filed an Amended Petition on September 22, 2025. According to that filing, Petitioner posted bond and was released from custody on August 19, 2025. (Am. Pet. ¶ 76, Dkt. No. 24.) He remains out of custody. Petitioner persists in seeking habeas relief because, he explains, when the preliminary injunction ends, Respondents could return him to custody. (Am. Pet. ¶ 78.) He therefore contends that his petition is not moot and asks the Court to find that 8 U.S.C. § 1226(a)—not § 1225(b)—governed his detention. (*See* Pet. ¶¶ 189–90.)

Respondents urge the Court to deny the Amended Petition as moot because Petitioner is no longer in custody. (Resp’ts’ Resp. at 1, Dkt. No. 25.) After Respondents filed their response, the DHS withdrew its appeal of the IJ’s bond decision. (Anderson 3d Decl. ¶ 4, Dkt. No. 34.) After that development, Petitioner notified the Court that “[i]t is no longer necessary for the Court to address the automatic stay portion of Petitioner’s claim,” and “[t]he Court need only focus on the issue of whether 8 U.S.C. § 1225 or § 1226

governs Petitioner's detention." (Anderson 3d Decl. ¶¶ 5–6.) The Court will limit its discussion accordingly.

II. Discussion

A. Mootness

When a noncitizen obtains a release on bond as the result of a preliminary injunction, “[u]nless that preliminary injunction was made permanent and was not disturbed on appeal, the[] individual[] face[s] the threat of re-arrest and mandatory detention.” *Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality opinion). Habeas petitions “do not become moot simply because a person is released from immigration detention pursuant to bond based on a court order providing temporary relief.” *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2998184, at *4 (D. Nev. Oct. 24, 2025) (citing *Nielsen*). As long as Respondents have not disavowed their use of the automatic stay or their position on detention under § 1225(b)(2), Petitioner remains vulnerable to re-detention, and his “claim is not moot even after his release.” *See id.*

The Honorable Jeffrey M. Bryan, United States District Judge, recognized this exception to mootness in *Francisco T. v. Bondi*, No. 25-CV-3219 (JMB/DTS), 2025 WL 3236513 (D. Minn. Nov. 19, 2025). There, the respondents—who are mostly the same federal officials named in this matter—conceded that if the preliminary injunction were not reduced to a final order, the government could re-detain the petitioner under § 1225(b)(2). *Francisco T.*, 2025 WL 3236513, at *3. “A habeas petition should not be dismissed as moot if ‘the issue is deemed a wrong capable of repetition yet evading review.’” *Id.* This exception to mootness “applies where the challenged action is too short

in its duration to be fully litigated before it ends or expires, and there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Id.* (cleaned up). The court found that the petitioner in *Francisco T.* had a reasonable expectation of being returned to custody and thus granted the petition to the extent it requested that the petitioner be provided with a bond hearing pursuant to 8 U.S.C. § 1226(a) if he were re-detained. *Id.*

The Court finds here that Petitioner has a reasonable expectation he would be re-detained under § 1225(b)(2) when the preliminary injunction ends. The preliminary injunction is not permanent. When ruling from the bench, Judge Brasel said that ICE “is enjoined from enforcing the automatic stay provision as to this petitioner *during the pendency of the court’s consideration of the petition for writ of habeas corpus.*” (Tr. at 36) (emphasis added). In other words, the preliminary injunction will expire when the petition is ruled on, and Respondents could attempt to re-detain Petitioner under § 1225(b)(2). Respondents have not disavowed an intent to do so. With respect to the durational requirement, it is very much possible that Respondents could re-detain Petitioner without bond, and then release him before he could obtain judicial relief via a newly filed habeas petition. *See Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *11 (W.D. Pa. Oct. 23, 2025). This pattern could continue repeatedly, unless and until a final order finding that Petitioner is not subject to 8 U.S.C. § 1225(b)(2) is issued. Therefore, the capable-of-repetition-yet-evading-review exception to mootness applies.

Respondents’ authority on mootness is distinguishable. In *Ali v. Cangemi*, 419 F.3d 722 (8th Cir. 2005), the court did not consider whether an exception to the mootness

doctrine applied. And, in *Kargbo v. Brott*, No. 15-CV-2713 (PJS/LIB), 2016 WL 3676162 (D. Minn. July 6, 2016), the court found there was no chance that the government would take the petitioner back into custody under the same circumstances, unlike here, where Respondents could attempt to re-detain Petitioner under § 1225(b)(2) and have not disclaimed an intent to do so.

B. Merits

Turning to whether Petitioner is subject to § 1225(b)(2) or § 1226(a), the Court is not writing on a blank slate. Along with every other district judge in the District of Minnesota who has written on the issue, Judge Brasel has concluded that § 1226(a) governs the detention of noncitizens who are already present or residing in the United States, such as Petitioner—not § 1225(b), which governs the detention of noncitizens seeking admission into the United States. *See Andres R.E. v. Bondi*, No. 25-CV-3946 (NEB/DLM), 2025 WL 3146312, at *2 (D. Minn. Nov. 4, 2025); *accord Fuentes v. Olson*, No. 25-CV-4456 (LMP/ECW), 2025 WL 3524455, at *4 (D. Minn. Dec. 9, 2025); *Santos M.C. v. Olson*, No. 25-CV-4264 (PJS/DJF), 2025 WL 3281787, at *3 (D. Minn. Nov. 25, 2025); *Avila v. Bondi*, No. 25-CV-3741 (JRT/SGE), 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21, 2025); *Eliseo A.A. v. Olson*, No. 25-CV-3381 (JWB/DJF), 2025 WL 2886729, at *3–4 (D. Minn. Oct. 8, 2025); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at *5–7 (D. Minn. Oct. 1, 2025); *Francisco T.*, 2025 WL 3236513, at *2–3; *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025).

It is not necessary to recount *Andres R.E.* in detail. A few key points will suffice. The question in *Andres R.E.* was whether the petitioner, who had resided in the United States for years, was “an applicant for admission under Section 1225(b) or an alien residing in the United States under Section 1226.” *Andres R.E.*, 2025 WL 3146312, at *2. If the former, the petitioner was subject to mandatory detention and was not entitled to a bond hearing; if the latter, detention was discretionary, and the petitioner was entitled to a bond hearing. *Id.* The respondents took the former position. Judge Brasel found, however, that the respondents’ interpretation of § 1225(b)(2) and § 1226(a) was contrary to the plain text of the statutes, would render superfluous a recent amendment to § 1226(c) under the Laken Riley Act, and was inconsistent with the government’s own actions. *Andres R.E.*, 2025 WL 3146312, at *2–3. Therefore, Judge Brasel concluded, the petitioner was detained pursuant to § 1226(c), not § 1225(b), and the habeas petition was granted.⁸ *Andres R.E.*, 2025 WL 3146312, at *3.

Respondents have not shown how this case is materially distinguishable, either factually or legally, from *Andres R.E.* Indeed, it is remarkably the same.⁹ Thus, it is unlikely that Judge Brasel would conclude in this case that the Respondents’ interpretation of § 1225(b)(2) is correct.

⁸ Judge Brasel also held in *Andres R.E.* that 8 U.S.C. § 1252(b)(9) and (g) did not strip the court of jurisdiction to hear the petition. Respondents did not raise § 1252 in their response to the Amended Petition, but even if they had, Judge Brasel has already determined that jurisdiction exists in this case. (*See* Tr. at 27–29.)

⁹ The Court observes that the petition in *Andres R.E.* was granted even though the petitioner had been released from detention by that time. *See* 2025 WL 3146312, at *3 n.4.

Accordingly, **IT IS HEREBY RECOMMENDED** that Petitioner Wuilmer F.'s Amended Petition for Writ of Habeas Corpus (Dkt. No. 24) be **GRANTED** to the extent it asks for a determination that Petitioner was detained under 8 U.S.C. § 1226(a) and not under 8 U.S.C. § 1225(b)(2).

Dated: December 18, 2025

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* D. Minn. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).