

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
No. 0:25-cv-3236-NEB-JFD

Wuilmer Ferrera-Bejarano,

Petitioner,

v.

Pamela Bondi, Attorney General, *et al.*,

Respondents.

**FEDERAL RESPONDENTS'
OBJECTION TO REPORT
AND RECOMMENDATION**

Federal Respondents respectfully submit these Objections to the Report and Recommendation (ECF No. 35, "R&R"). Though the R&R accurately recites the background facts and procedural history, the R&R fails to take into account the undisputed conclusion that any claims upon which relief can be presently granted are moot and that the Petitioner lacks standing to support his requests for prospective relief. For these reasons, the Federal Respondents' objections should be sustained, the R&R should be rejected, and the Amended Petition should be dismissed.

I. The R&R failed to examine mootness as to all the relief sought in the Amended Petition.

The R&R focuses exclusively on re-detention in analyzing mootness. (ECF No. 8-9.) Regarding re-detention, the R&R emphasized that the Federal Respondents "have not disclaimed an intent to do so." (ECF No. 35 at 9.) Yet, the relief Petitioner seeks in the Amended Petition is not limited to detention. The Petitioner asks that the Court find that, under the Administrative Procedure Act, the *Hurtado* BIA decision is "inconsistent with the text and structure of 8 U.S.C. §§ 1225(b)(2)(A); 1226(a), and the INA." (ECF No. 24-

1 at ¶ 227; *see also id.* at Prayer for Relief ¶ 8.) Because it is undisputed that the Petitioner is not in custody, Petitioner lacks a factual basis upon which to challenge *Hurtado*. *See, e.g., Sirlef, v. Secretary*, No. 17-cv-4126, 2018 WL 3407697, at *1 (D. Minn. Jun. 19, 2018) (collecting cases on mootness), *report and recommendation adopted*, 2018 WL 3404154 (D. Minn. Jul. 12, 2018). The Amended Petition is subject to dismissal for want of ongoing jurisdiction because this claim, which the R&R fails to address, is moot. *See Ali v. Cangemi*, 419 F.3d 722, 724 (8th Cir. 2005).

II. The R&R did not address mootness about prospective relief arising from a new arrest.

By granting Petitioner a bond hearing and subsequent bond, issues related to Petitioner's detention are moot. Thus, the R&R's analysis of the merits of the parties' respective Section 1225 and Section 1226 arguments are of no moment. (ECF No. 35 at 9-10). Though the R&R recited the correct standard for the capable-of-repetition-yet-evading-review exception to the mootness doctrine, it fails to address the factual reality that any new detention of the Petitioner would necessarily entail new facts and circumstances. The Court's well-grounded reasoning in *Kargbo* rings true here: "[i]t is now impossible for the government to repeat the *same* unlawful conduct that [Petitioner] challenged." *Kargbo v. Brott*, No. 15-cv-2713 (PJS/LIB), 2016 WL 3676162 at *2 (D. Minn. July 6, 2016). Additionally, the R&R's rejection of the mootness findings in *Kargbo* based on the reasoning that "there was no change that the government would take the petitioner back into custody under the same circumstances" ignores that every detention is unique. (ECF No. 35 at 9.) For example, if the Petitioner were to violate the law or seek

legal status that could impact the legal basis for his detention status such as an application for asylum these are all relevant facts and circumstances that would require an individualized assessment. A finding to the contrary would constitute an advisory opinion for improper prospective relief. *See Am. United for Separation of Church and State v. Prison Fellowship Ministries*, 509 F.3d 406, 420-21 (8th Cir. 2007).

III. The R&R's findings on the impact of the expiration of the preliminary injunction demonstrate that the Petitioner's claims are moot.

Contrary to the R&R's findings, because the Petitioner is not in custody, the preliminary injunction expiring upon the dismissal of the Amended Petition. The test for mootness, as the Eighth Circuit held in *Ali v. Cangemi*, 419 F.3d 722, 724 (8th Cir. 2005), is whether the court has an "inability to provide an effective remedy at this time." Whether or not the preliminary injunction expires, there is no relief that the Court can grant to the Petitioner. He is out of custody and is not currently in custody. (Declaration of William J. Robinson ("Robinson Decl.") ¶ 4, Ex. A.) Because a re-detention would involve a new detention and there is no factual basis upon which to presently determine whether the capable-of-repetition-yet-evading-review exception applies. As such, the R&R's attempt to distinguish *Ali* rings hollow. (ECF No. 35 at 8-9.)

CONCLUSION

For the reasons set forth above, the Federal Respondents' objections should be sustained, the R&R should be rejected, and the Amended Petition should be dismissed.

Dated: January 2, 2026

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