UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BENJAMIN GARCIA HERNANDEZ, *Petitioner*	§	
v.	§	**No. 1:-25-CV-01621-ADA-DH**
KRISTI NOEM, ***in her capacity as Secretary of the Department of Homeland Security,*** **et al.;** *Respondents*	§	

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

TO: THE HONORABLE ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE

Before the Court is Petitioner Benjamin Garcia Hernandez's Motion for a Preliminary Injunction, Dkt. 2, and all related briefing. After reviewing these filings and the relevant case law, the undersigned recommends that the motion be denied.

I. BACKGROUND

Benjamin Garcia Hernandez filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 based on his anticipation that the government will wrongly subject him to mandatory detention under 8 U.S.C. § 1225(b), when he can only be properly detained after a bond hearing pursuant to 8 U.S.C. § 1226(a). *See* Dkt. 1. Hernandez entered the United States without inspection in 2000 and has lived in the country since then. *Id.* at 11. Hernandez was recently arrested for driving while intoxicated and transferred to U.S. Immigration and Customs Enforcement ("ICE"). *Id.* at 11-12.

The Department of Homeland Security initiated removal proceedings against Hernandez, accusing him of being present in the United States without having been admitted or paroled under the Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i). Dkts. 1, at 12; 1-1. An immigration judge ("IJ") denied Hernandez bond under § 1226(a) after holding a hearing and finding that Hernandez had not met his burden of showing that he was not a danger to the community based on his recent arrest and a prior conviction for misdemeanor assault. Dkts. 1, at 11-12; 1-2. Hernandez appealed that decision to the Board of Immigration Appeals ("BIA"), where it remains pending. Dkts. 1, at 12; 1-3.

Meanwhile, the BIA issued a decision in a separate case finding, under a new interpretation of the relevant statutes, that a long-term U.S. resident was subject to mandatory detention under 8 U.S.C. § 1225(b) as "an applicant for admission" such that the resident was not entitled to a bond hearing under § 1226(a). Dkt. 1, at 12 (citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)). Based on this decision, Hernandez expects the BIA to find that it and the IJ lack jurisdiction to evaluate Hernandez's entitlement to bond. *Id.* Hernandez claims that his potential future subjection to mandatory detention under 8 U.S.C. § 1225(b) would violate the INA, bond regulations issued under the INA, and his due-process rights under the Fourteenth Amendment. *Id.* at 13-15.

On the same day he filed his petition, Hernandez filed a motion for a preliminary injunction. Dkt. 2. In the motion, Hernandez asks the Court to order his immediate release from detention, order a new bond hearing under § 1226(a), vacate

any adverse decision from the BIA on Hernandez's pending appeal of his bond decision, and prohibit Hernandez's detention under § 1225(b). Dkt. 2, at 7. Respondents Kristi Noem, Pamela Bondi, Michael Vergara, the Department of Homeland Security, ICE, and the Executive Office of Immigration Review filed a response to Hernandez's motion, which Respondent Charlotte Collins, Warden of the T. Don Hutto Detention Center (collectively, the "government") joined, arguing that the Court should deny Hernandez's request for preliminary relief. Dkts. 9; 10.

II. LEGAL STANDARD

A preliminary injunction is an extraordinary remedy, and the decision to grant such relief is to be treated as the exception rather than the rule. *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1050 (5th Cir. 1997). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The party seeking injunctive relief carries the burden of persuasion on all four requirements. *PCI Transp. Inc. v. W. R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005). "However, even when a movant [has] established each of the four requirements described above, the decision whether to grant or deny a preliminary injunction remains within the Court's discretion[.]" *Sirius Comput. Sols. v. Sparks*, 138 F. Supp. 3d 821, 836 (W.D. Tex. 2015).

III. DISCUSSION

Hernandez cannot be granted a preliminary injunction unless he can establish that he will suffer irreparable harm without an injunction. *ScaleFactor, Inc. v. Process Pro Consulting, LLC*, No. 1:19-CV-229-RP, 2019 WL 1317332, at *7 (W.D. Tex. Mar. 22, 2019) ("[A] preliminary injunction is available only where the potential injury to the plaintiff is irreparable." (citing *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 627 (5th Cir. 1985)). Here, the undersigned finds that Hernandez has failed to show that he will suffer irreparable harm in the absence of an injunction and accordingly recommends that the District Judge deny Hernandez's motion for a preliminary injunction without prejudice to refiling should the government seek to detain him under § 1225(b).

Hernandez argues that his "ongoing detention—now exceeding 120 days—causes irreparable harm through loss of liberty, family separation from his U.S. citizen spouse and stepchildren, and inability to pursue relief like cancellation of removal." Dkt. 2, at 5. Hernandez cites *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025), for the proposition that the harms he alleges have been found to be "irreparable in immigration contexts." Dkt. 2, at 5. In *Gomes*, however, the court assessed irreparable harm in the context of relaxing the exhaustion requirement where the IJ erroneously deemed the petitioner ineligible for bond under § 1225(b) when petitioner should have been able to seek release on bond under § 1226(a). Here, in contrast, Hernandez was already afforded a bond hearing under § 1226(a)—the very statute under which he seeks a new bond hearing through

this lawsuit and his motion for injunctive relief. Dkts. 1, at 15; 2, at 7 (requesting "immediate release or a new bond hearing under § 1226(a)").

Hernandez's request stands in stark contrast to recent cases where courts have granted preliminary injunctions to petitioners who, unlike Hernandez, were either granted bond under § 1226(a) only to have it revoked due to the government's invocation of § 1225(b) or were denied a bond hearing entirely under § 1225(b). *See, e.g.*, *Gonzalez Guerrero v. Noem et al.*, 1:25-cv-1334-RP, Dkt. 20 (W. D. Tex. Oct. 27, 2025); *Gomes*, 2025 WL 1869299, at *9. In those cases, the petitioner would otherwise have been released or afforded a bond hearing absent the government's allegedly unlawful application of § 1225(b). *Gonzalez Guerrero*, 1:25-cv-1334-RP, Dkt. 20, at 2 (recounting that petitioner was granted bond under § 1226(a) but that the BIA vacated the IJ's order due to the government's later insistence that § 1225(b) applied to petitioner); *Gomes*, 2025 WL 1869299, at *1 (noting that petitioner was initially detained under § 1226(a) but then found ineligible for bond based on the government's improper invocation of § 1225(b)). Here, in contrast, absent a potential, future invocation of § 1225(b), Hernandez would otherwise remain lawfully detained pending the appeal of his bond decision with the BIA.[1] Hernandez cannot claim to be irreparably harmed by his continued, admittedly lawful detention under § 1226(a) pending his appeal at the BIA.

[1] Hernandez's habeas petition is aimed at the government's potential invocation of § 1225(b) to mandatorily detain him but does not otherwise attack the validity of his current detention under § 1226(a). Dkts. 1; 2.

Hernandez's request for preliminary relief thus seeks to alter the status quo by asking the Court to order his release or entitlement to a new bond hearing when he does not allege that he is currently being unlawfully detained under § 1226(a). *See* Dkts. 1; 2; *Stringer v. Hughs*, No. SA-16-CV-257-OG, 2020 WL 6875182, at *6 (W.D. Tex. Aug. 28, 2020) ("Preliminary injunctions that would change, rather than maintain, the status quo are generally disfavored[.]"); *Justin Indus., Inc. v. Choctaw Secs., L.P.*, 920 F.2d 262, 268 n.7 (5th Cir. 1990) (explaining that plaintiffs seeking a preliminary injunction that alters the status quo must "show[ ] a clear entitlement to the relief under the facts and the law"). Nothing in his petition or motion explains why he would be entitled to release or a new bond hearing under § 1226(a) pending the BIA's review of the bond determination made under that statute. *See* Dkts. 1; 2.

As noted above, Hernandez has failed to show how this current detention under § 1226(a) (which he does not challenge through this habeas petition) has caused him irreparable harm—especially where he may still pursue relief from removal while detained and the government has not yet invoked § 1225(b) before the BIA. Dkts. 2, at 6; 9, at 11. Hernandez expresses concerns that the government will improperly invoke § 1225(b) during his BIA appeal, but any such change in the government's position before the BIA may be addressed through a future motion for injunctive relief or through the normal course of this litigation given that Hernandez is not currently subject to any irreparable harm in being lawfully detained pursuant to § 1226(a).

Because Hernandez has failed to demonstrate that he will suffer irreparable harm in the absence of an injunction at this time, the undersigned will recommend

that the District Judge deny his motion for a preliminary injunction without prejudice.

IV. RECOMMENDATION

In accordance with the foregoing discussion, the undersigned **RECOMMENDS** that the District Judge deny Hernandez's Motion for a Preliminary Injunction, Dkt. 2, without prejudice.

V. WARNINGS

The parties may file objections to this report and recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Judge need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after the party is served with a copy of the report shall bar that party from *de novo* review by the District Judge of the proposed findings and recommendations in the report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Judge. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED November 13, 2025.

DUSTIN M. HOWELL
UNITED STATES MAGISTRATGE JUDGE