

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

Emilio R. v. Pamela Jo Bondi

Emilio R. · No. 26-cv-00105 (MJD/ECW) · Decided January 18, 2026

SUMMARY

This Report and Recommendation addresses a 28 U.S.C. § 2241 habeas petition by a Mexican citizen detained by Immigration and Customs Enforcement. The petitioner sought a determination that his detention was discretionary under 8 U.S.C. § 1226(a), rather than mandatory under 8 U.S.C. § 1225(b) (2), and requested a bond hearing. The magistrate judge recommended granting the petition, ordering a bond hearing in Minnesota, requiring the petitioner’s return to Minnesota, and enjoining further transfer outside the state.

CASE DETAILS

COURT	United States District Court for the District of Minnesota
WRITING FOR THE COURT	Elizabeth Cowan Wright
JURISDICTION	United States District Court for the District of Minnesota
DECIDED	January 18, 2026
DOCKET	26-cv-00105 (MJD/ECW)
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petitioner sought habeas relief under 28 U.S.C. § 2241 and a declaratory determination that his immigration detention was governed by 8 U.S.C. § 1226(a), entitling him to a bond hearing, rather than by the mandatory-detention provision of 8 U.S.C. § 1225(b)(2). The magistrate judge issued a Report and Recommendation recommending that the petition be granted in part and that Respondents provide a bond hearing and return Petitioner to Minnesota.
STANDARD OF REVIEW	A habeas petitioner bears the burden of proving entitlement to relief by a preponderance of the evidence.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Emilio R. v. Pamela Jo Bondi, in her official capacity as Attorney General of the United States, Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security, Todd Lyons, in his official capacity as Acting Director of United States Immigration and Customs Enforcement, David Easterwood, in his official capacity as

TOPICS

immigration detention removal proceedings statutory interpretation injunctions equitable relief

PRACTICE AREAS

immigration detention habeas corpus immigration statutory interpretation remedies

QUESTIONS PRESENTED

1. Whether a noncitizen who allegedly entered the United States without inspection or parole, has lived in the country for more than 20 years, and was arrested by ICE in the interior is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) or discretionary detention under 8 U.S.C. § 1226(a).
2. Whether Petitioner is entitled to a custody redetermination or bond hearing before an immigration judge.
3. Whether Respondents should be ordered to return Petitioner to Minnesota and restrained from transferring him outside Minnesota while the habeas petition is pending.

HOLDINGS

1. The Report and Recommendation adopted the statutory analysis of *Martin R. v. Noem* and related decisions, concluding that Respondents' interpretation requiring mandatory detention under § 1225(b)(2) for noncitizens living in the United States who entered without inspection should be rejected. It therefore recommended treating Petitioner as entitled to a bond hearing under § 1226(a).
2. The court recommended granting the petition insofar as Respondents must provide Petitioner a bond hearing before an immigration judge in Minnesota within seven days after adoption of the Report and Recommendation, with immediate release if the hearing was not provided within that period.
3. The court recommended ordering Respondents to immediately return Petitioner to Minnesota and enjoining them from moving him outside Minnesota until further order of the court.

KEY QUOTATIONS

“Courts have overwhelmingly rejected Respondents’ interpretation that section 1225(b)(2) requires the mandatory detention of all noncitizens living in the country who are ‘inadmissible’ because they entered the United States without inspection.”

*“The Court sees no reason to depart from this well-reasoned consensus, and adopts the statutory analysis set forth in *Martin R.* and the myriad other cases rejecting Respondents’ position.”*

FACTUAL BACKGROUND

Petitioner is a citizen of Mexico who had resided in the United States for more than 20 years. Respondents asserted that he had entered the United States without inspection or parole and had previously been granted voluntary return to Mexico on two occasions. ICE arrested him in January 2026 as part of Operation Metro

Surge, detained him, and transferred him from Minnesota to a detention facility in El Paso, Texas while removal proceedings were pending.

PROCEDURAL HISTORY

Petitioner filed his habeas petition on January 8, 2026, after ICE arrested and detained him. The district judge ordered Respondents to answer and enjoined removal of Petitioner from the District of Minnesota pending a final decision. Respondents filed a response relying generally on arguments presented in *Avila v. Bondi*, Petitioner replied, and the magistrate judge issued this Report and Recommendation.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

No remand was ordered. The Report and Recommendation recommended that Respondents provide a bond hearing before an immigration judge in Minnesota within seven days after adoption, immediately release Petitioner if the hearing was not provided, return Petitioner to Minnesota, and refrain from moving him outside Minnesota until further order.

CASES CITED

- *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025)
- *Mahamed C.A. v. Noem*, No. 25-CV-4551 (MJD/JFD), 2025 WL 3771299, at *1-2 (D. Minn. Dec. 16, 2025)
- *Mahamed C.A. v. Noem*, 2025 WL 3754012 (D. Minn. Dec. 29, 2025)
- *Avila v. Bondi*, No. 25-3248 (8th Cir. docketed Nov. 10, 2025)
- *Martin R. v. Noem*, No. 26-CV-168 (JMB/LIB), 2026 WL 115024, at *2 (D. Minn. Jan. 15, 2026)

OPINION

Bondi

PER CURIAM.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Emilio R., Case No. 26-cv-00105 (MJD/ECW) Petitioner,

v. REPORT AND RECOMMENDATION

Pamela Jo Bondi, in her official capacity as Attorney General of the United States; Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security; Todd Lyons, in his official capacity as Acting Director of United States Immigration and Customs Enforcement; and David Easterwood, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement, Respondents. This matter is before the Court on Petitioner Emilio R.'s Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, filed on

January 8, 2026. (Dkt. 1.) Petitioner is a citizen of Mexico who has resided in the United States for more than 20 years. (Id. ¶ 3.) He was arrested by U.S. Immigration and Customs Enforcement (“ICE”) on January 7, 2026 and has been detained by ICE since that date. (Id.) Petitioner seeks a declaratory judgment that he is subject to discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2), and that an immigration judge must therefore hold a custody redetermination hearing under 8 C.F.R. § 1236 to allow Petitioner the opportunity to seek a bond for his release from custody. (Id. ¶ 1; see also Dkt. 7 (Petitioner’s reply).) On January 12, 2026, U.S. District Judge Michael J. Davis issued an Order requiring Respondents to file their answer no later than January 14, 2026, certifying the true cause and proper duration of Petitioner’s confinement and showing cause why the writ should not be granted in this case. (Dkt. 3 ¶ 1.) Judge Davis also “enjoined Respondents from removing Petitioner from the District of Minnesota” until a final decision has been made on the Petition. (Id. ¶ 4.) On January 14, 2026, Respondents filed a Response and a supporting Declaration of Seth T. Patrin, who is a Deportation Officer with ICE. (Dkts. 5, 6.) Petitioner filed his reply on January 17, 2026 (Dkt. 7), and the case is now ripe for decision.

I. FACTS

Petitioner alleges, and Respondents do not dispute, that he is a citizen of Mexico who has resided in the United States for more than 20 years. (Dkt. 1 ¶¶ 44-45.) According to Respondents, Petitioner was twice encountered by U.S. Border Patrol in the United States in 2003 and granted voluntary return to Mexico on both occasions. (Dkt. 6 ¶¶ 4-5.) According to Respondents, Petitioner “entered the United States without inspection or parole.” (Id.) ICE arrested Petitioner as part of “Operation Metro Surge” on January 8, 2026, and was transferred to El Paso Camp East Montana in El Paso, Texas, on the same day.¹ (Id. ¶ 7.) Respondents state Petitioner is currently awaiting an immigration removal hearing. (Id.)

II. LEGAL STANDARD

A federal court may provide habeas relief to a person who is detained in violation of the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3). Petitioner has the burden of proving his entitlement to relief by a preponderance of the evidence. *Jose J.O.E. v. Bondi*, 797 F. Supp. 3d 957, 965 (D. Minn. 2025) (citations omitted). As U.S. Magistrate Judge John F. Docherty recently explained in a similar case: Two provisions of the Immigration and Nationality Act are relevant to this case. Under 8 U.S.C. § 1225(b)(2), which applies to “an alien seeking admission” to the United States, detention while immigration proceedings are conducted is mandatory, while under 8 U.S.C. § 1226(a), which applies to an alien who is unlawfully present in the United States, detention is discretionary and may only be imposed after a hearing. *Mahamed C.A. v. Noem*, No. 25-CV-4551 (MJD/JFD), 2025 WL 3771299, at *1-2 (D. Minn. Dec. 16, 2025), R. & R. adopted sub nom., 2025 WL 3754012 (D. Minn. Dec. 29, 2025).

III. ANALYSIS

As stated above, Petitioner seeks a declaratory judgment that he is subject to discretionary

detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2), and thus entitled to a custody redetermination hearing before an immigration judge under 8 C.F.R. § 1236 so Petitioner can seek a bond for his release from custody. (Id. ¶ 1; see also Dkt. 7 (Petitioner's reply).) The Response makes the following argument for denial of the Petition: This petition raises legal and factual issues similar to those in prior habeas petitions this Court has decided. Those issues are currently before the Eighth Circuit on expedited review in *Avila v. Bondi*, No. 25-3248 (8th Cir. docketed Nov. 10, 2025). For purposes of expediting these proceedings, the Federal Respondents assert all arguments raised by the government in *Avila*, preserve those arguments for any appeal in this case, and respectfully request that the Court deny Petitioner's habeas petition. (Dkt. 5 at 1.)² Respondents did not make any specific arguments to support their request for denial. (Id.) In his Reply, Petitioner argues, "As this District has previously determined in numerous other cases, Respondents' interpretation of 8 U.S.C. §§ 1225 and 1226 is erroneous." (Dkt. 7 at 3.) Petitioner further argues that the Response "suggest[s] that [Petitioner] was arrested precisely under Section 1226 because it reflects that Petitioner was arrested and detained within the interior of the United States by ICE on January 8, 2026 'as part of Operation Metro Surge'" and "[u]nder the plain language of section 1226, a noncitizen may be arrested and detained pending a decision on whether the alien is to be removed from the United States, but is entitled to a bond hearing under that same section." (Id. at 5.) The crux of the issue here is whether Petitioner, who Respondents assert entered the United States without inspection or parole, who has lived in the United States for over 20 years, and who was arrested by ICE as part of "Operation Metro Surge" in 2026, should be treated as an "applicant[] for admission" under § 1225, subjecting him to mandatory detention, or as "an alien" who was "arrested and detained pending a decision on whether the alien is to be removed from the United States" under § 1226, and therefore entitled to a bond hearing before an immigration judge. Given the absence of any specific argument by Respondents, the Court turns to the numerous thoughtful and persuasive decisions addressing this issue in this District and nationwide, which overwhelmingly support granting the Petition. See *Mahamed C.A.*, 2025 WL 3771299, at *2-3 ("The United States concedes that Petitioner's claim is similar to numerous other immigration cases in this District in which citizens detained by U.S. Immigration and Customs Enforcement seek bond hearings, in every one of which a district judge of this Court has ruled against the government's new interpretation. . . . Going beyond Minnesota to consider this question on a national level, over 300 cases (and counting) have been decided adversely to the government."). As another judge in this District recently explained: "Courts have overwhelmingly rejected Respondents' interpretation that section 1225(b)(2) requires the mandatory detention of all noncitizens living in the country who are 'inadmissible' because they entered the United States

without inspection.” Martin R. v. Noem, No. 26-CV-168 (JMB/LIB), 2026 WL 115024, at *2 (D. Minn. Jan. 15, 2026). The Court sees no reason to depart from this well-reasoned consensus, and adopts the statutory analysis set forth in Martin R. and the myriad other cases rejecting Respondents’ position. Consequently, the Court recommends that the Petition be granted insofar as Respondents be ordered to hold a bond hearing for Petitioner before an immigration judge in Minnesota within 7 days of an order adopting this Report and Recommendation, and, if he is not granted a bond hearing within 7 days of such an order, that Petitioner be immediately released. The Court further recommends Respondents be ordered to immediately return Petitioner to Minnesota until further order of the Court, and Respondents be enjoined from again moving Petitioner outside of Minnesota until further order of the Court, so that Petitioner may consult with his counsel while the Court is considering his Petition, and so that there is no risk that removal of Petitioner from Minnesota will deprive this Court of jurisdiction over the Petition. Given Respondents’ non-specific arguments in their Response, the Court sets an expedited deadline for objections to this Report and Recommendation. See D. Minn. LR 72.2(a)(1) (“A party may file and serve objections to the order within 14 days after being served with a copy, unless the court sets a different deadline.”) (emphasis added). Any objections to this Report and Recommendation are due on January 21, 2026. Responses to objections are due on January 23, 2026.

IV. RECOMMENDATION

Based on the files, records, and proceedings herein, IT IS RECOMMENDED THAT:

1. The Petition be GRANTED insofar as Respondents be ordered to hold a bond hearing for Petitioner before an immigration judge in Minnesota within 7 days of an order adopting this Report and Recommendation, and, if he is not granted a bond hearing within 7 days of such an order, that Petitioner be immediately released.

2. Respondents be ORDERED to immediately return Petitioner to Minnesota until further order of the Court, and Respondents be ENJOINED from again moving Petitioner outside of Minnesota until further order of the Court, so that Petitioner may consult with his counsel while the Court is considering his Petition, and so that there is no risk that removal of Petitioner from Minnesota will deprive this Court of jurisdiction over the Petition. Dated: January 18, 2026 s/ Elizabeth Cowan Wright Elizabeth Cowan Wright 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. The Court modifies this deadline such that objections are due on or before January 21, 2026. See D. Minn. LR 72.2(a)(1) (“A party may file and serve objections to the order within 14 days after being served with a copy, unless the court sets a different deadline.”).

Responses to objections are due on or before January 23, 2026. All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).

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