

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Rogelio Bolufe Izquierdo v. Melissa Ortiz, Warden, Torrance County Detention Facility; Joel Garia, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement; Todd M. Lyons, Acting Director, United States Immigration and Customs Enforcement; Kristi Noem, Secretary of Homeland Security; and Pamela Jo Bondi, United States Attorney General

Civ. No. 25-1304 JB/SCY · No. Civ. No. 25-1304 JB/SCY · Decided February 4, 2026

SUMMARY

In this proposed findings and recommended disposition, a United States Magistrate Judge recommends granting the respondents’ motion to dismiss and denying Rogelio Bolufe Izquierdo’s 28 U.S.C. § 2241 habeas petition. The recommendation concludes that the bond-hearing claim is moot, the Zadvydas and Jennings detention claims are insufficient, conditions-of-confinement claims are not cognizable in habeas, and challenges to the removal proceedings are premature and outside the district court’s jurisdiction.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	Steven C. Yarbrough, United States Magistrate Judge
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	February 4, 2026
DOCKET	Civ. No. 25-1304 JB/SCY
DISPOSITION	other
PROCEDURAL POSTURE	Proposed findings and recommended disposition on Respondents' Rule 12(b)(1) and Rule 12(b)(6) motion to dismiss a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2241.
STANDARD OF REVIEW	Rule 12(b)(1) facial and factual attacks on subject-matter jurisdiction; for a factual attack, the court may consider evidence outside the complaint and resolve disputed jurisdictional facts. Under Rule 12(b)(6), the court determines whether the allegations, accepted as true and

	viewed in the light most favorable to the plaintiff, state a facially plausible claim for relief.
PRECEDENTIAL VALUE	nonprecedential proposed findings and recommended disposition
PARTIES	Rogelio Bolufe Izquierdo v. Melissa Ortiz, Warden, Torrance County Detention Facility, Joel Garia, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement, Todd M. Lyons, Acting Director, United States Immigration and Customs Enforcement, Kristi Noem, Secretary of Homeland Security, Pamela Jo Bondi, United States Attorney General

TOPICS

immigration detention

removal proceedings

motions to dismiss

subject matter jurisdiction

civil procedure

PRACTICE AREAS

immigration law

federal habeas corpus

civil procedure

administrative law

QUESTIONS PRESENTED

1. Whether Petitioner's claim that he was detained without a bond hearing was moot because he had already received a custody redetermination hearing and remained eligible for further bond review.
2. Whether Petitioner's continued detention violated *Zadvydas v. Davis* or *Jennings v. Rodriguez* while his removal order was not administratively final.
3. Whether Petitioner's challenges to the conditions of his confinement were cognizable in a § 2241 habeas proceeding.
4. Whether the district court had jurisdiction to review alleged errors in Petitioner's immigration proceedings before a final order of removal and while his BIA appeal was pending.

HOLDINGS

1. The claim that Petitioner was detained without a bond hearing was moot because the record showed that he had received a custody redetermination hearing, and Respondents did not dispute his eligibility for further bond review.
2. Petitioner could not obtain relief under *Zadvydas* because his removal order was not administratively final while his appeal to the BIA was pending, so the statutory removal period had not begun.
3. *Jennings* did not support Petitioner's claim that his continued detention was unlawful because *Jennings* rejected the argument that the applicable detention statutes require a bond hearing after six months or periodic bond hearings every six months.
4. Claims challenging the conditions of Petitioner's confinement were not cognizable in a habeas proceeding and had to be pursued, if at all, through a separate civil-rights action.

5. The district court could not review Petitioner's challenges to the merits and procedures of his removal proceedings because there was no final order of removal and review of a final removal order lies in the court of appeals rather than the district court.

KEY QUOTATIONS

“to withstand a Rule 12(b)(6) motion to dismiss, a complaint must contain enough allegations of fact, taken as true, to state a claim to relief that is plausible on its face.” (Legal Standard)

“a prisoner who challenges the fact or duration of his confinement and seeks immediate release or a shortened period of confinement, must do so through an application for habeas corpus.” (Conditions of Detention)

“a prisoner who challenges the conditions of his confinement must do so through a civil rights action.” (Conditions of Detention)

FACTUAL BACKGROUND

Rogelio Bolufe Izquierdo, a Cuban national, was admitted to the United States on a B-2 visa that expired on July 21, 2020. After filing an adjustment-of-status application, he was arrested in Florida for drug possession, placed in removal proceedings for overstaying his visa, and detained by ICE at the Torrance County Detention Facility. An immigration judge held a custody redetermination hearing resulting in a designation of “No Action,” later denied asylum and ordered removal to Ecuador, and Petitioner appealed that order to the BIA, where the appeal remained pending.

PROCEDURAL HISTORY

Petitioner filed a § 2241 habeas petition challenging his immigration detention, the absence and adequacy of bond review, the duration of his detention, his detention conditions, and aspects of his removal proceedings. The district court granted leave for Petitioner to proceed through a next friend and ordered Respondents to answer. Respondents moved to dismiss, Petitioner did not respond within the applicable period, and the magistrate judge recommended granting the motion and denying the petition, subject to objections under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- *Va. Beach Fed. Sav. & Loan Ass'n v. Wood*, 901 F.2d 849 (10th Cir. 1990)
- *Paper, Allied-Indus., Chem. and Energy Workers Int'l Union v. Cont'l Carbon Co.*, 428 F.3d 1285, 1292 (10th Cir. 2005)
- *Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F.4th 500, 507 (10th Cir. 2023)
- *Khalik v. United Air Lines*, 671 F.3d 1188, 1190 (10th Cir. 2012)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
- *Mayfield v. Bethards*, 826 F.3d 1252, 1255 (10th Cir. 2016)

- Sutton v. Utah State Sch. for the Deaf & Blind, 173 F.3d 1226, 1236 (10th Cir. 1999)
- Schrock v. Wyeth, Inc., 727 F.3d 1273, 1280 (10th Cir. 2013)
- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Keller Tank Servs. II, Inc. v. Comm'r of Internal Revenue, 854 F.3d 1178, 1192–93 (10th Cir. 2017)
- Zadvydas v. Davis, 533 U.S. 678, 680, 699 (2001)
- Callender v. Shanahan, 281 F. Supp. 3d 428, 435 (S.D.N.Y. 2017)
- Ke Chen v. Holder, 783 F. Supp. 2d 1183, 1192 (N.D. Ala.)
- Chun Yat Ma v. Asher, 2012 WL 1432229, at *3 (W.D. Wash.)
- Jiang v. Bondi, 2025 WL 3281819, at *2 (D.N.M. Nov. 25, 2025)
- Jennings v. Rodriguez, 583 U.S. 281, 298–301, 306, 312 (2018)
- Palma-Salazar v. Davis, 677 F.3d 1031, 1035 (10th Cir. 2012)
- McIntosh v. U.S. Parole Comm'n, 115 F.3d 809, 811 (10th Cir. 1997)
- Richwine v. Romero, 2012 WL 13081847, at *22 (D.N.M. Feb. 8, 2012)
- Sosa-Valenzuela v. Gonzales, 483 F.3d 1140, 1143 (10th Cir. 2007)
- Matter of Yajure Hurtado, 29 I. & N. Dec. 216, 2025 WL 2674169 (BIA 2025)
- Makarevich v. Bondi, No. 1:25-CV-01002-KG-JHR, 2025 WL 3653895, at *1 (D.N.M. Dec. 17, 2025)
- Black v. Decker, 103 F.4th 133, 147–51 (2d Cir. 2024)
- Banyee v. Garland, 115 F.4th 928, 930 (8th Cir. 2024)