

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Fermin Lorenzo Cholula Rios v. Kristi Noem, et al.

No. 2:26-cv-00015-KG-JHR · No. 2:26-cv-00015-KG-JHR · Decided January 30, 2026

SUMMARY

The United States District Court for the District of New Mexico grants Fermin Lorenzo Cholula Rios’s habeas petition challenging his immigration detention. The court holds that 8 U.S.C. § 1226(a), rather than the mandatory-detention provisions of § 1225(b)(2)(A), governs because he entered the United States decades earlier and was not apprehended at or near the border. The court orders a prompt bond hearing before an immigration judge, with the Government required to prove by clear and convincing evidence that detention is warranted.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	Kenneth J. Gonzales
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	January 30, 2026
DOCKET	2:26-cv-00015-KG-JHR
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of habeas corpus under 28 U.S.C. § 2241 challenging immigration detention; the Government moved to dismiss, and the court held a hearing before granting the petition.
STANDARD OF REVIEW	Habeas corpus review under 28 U.S.C. § 2241(c)(3) is available to determine whether a person is in custody in violation of the Constitution, laws, or treaties of the United States.
PRECEDENTIAL VALUE	unknown
PARTIES	Fermin Lorenzo Cholula Rios v. Kristi Noem, et al.

TOPICS

- federal habeas corpus
- immigration detention
- statutory interpretation
- remedies
- immigration

PRACTICE AREAS

- immigration law
- federal habeas corpus
- immigration detention
- statutory interpretation
- remedies

QUESTIONS PRESENTED

1. Whether 8 U.S.C. § 1226(a), rather than the mandatory-detention provision in § 1225(b)(2)(A), governed the detention of a noncitizen who entered the United States decades earlier and was arrested away from the border.
2. Whether the proper habeas remedy was a prompt individualized bond hearing at which the Government bears the burden of proving by clear and convincing evidence that continued detention is justified.

HOLDINGS

1. Section 1226 governed Cholula Rios's detention because he entered the United States decades before his arrest, was not apprehended at or near the border, and entered before IIRIRA created § 1225's mandatory-detention scheme.
2. The Government must provide a prompt bond hearing and prove by clear and convincing evidence that Cholula Rios is a flight risk or danger to the community.

KEY QUOTATIONS

“The proper habeas remedy is a prompt bond hearing at which the Government must prove, by clear and convincing evidence, that Mr. Cholula is a flight risk or danger to the community.”

“Accordingly, § 1225’s mandatory detention provision does not apply, and § 1226 governs.”

FACTUAL BACKGROUND

Fermin Lorenzo Cholula Rios, a 69-year-old Mexican citizen, entered the United States in 1995 and lives in Oregon with six U.S. citizen children, including two minors. ICE arrested him on November 2, 2025, while he was driving to McDonald's, and later transferred him from Tacoma, Washington, to the Otero County Processing Center in New Mexico. He had prior convictions for DUI and harassment. Because he entered the United States before IIRIRA's enactment and was arrested decades after entry rather than at or near the border, the court concluded that § 1226 governed his detention.

PROCEDURAL HISTORY

ICE detained Cholula Rios and transferred him to the Otero County Processing Center in New Mexico. He filed a § 2241 habeas petition asserting that his detention was governed by 8 U.S.C. § 1226(a) and that he was entitled to an individualized bond hearing. The court issued a temporary restraining order directing his release, then granted the petition and ordered a bond hearing before an immigration judge.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The Government must provide Cholula Rios with a bond hearing under § 1226(a) before an immigration judge within seven days of the order. At the hearing, the Government must justify detention by clear and convincing

evidence. If it fails to provide the hearing within seven days, Cholula Rios must remain out of custody. The Government must file a status report within ten days confirming that the hearing occurred.

CASES CITED

- Preiser v. Rodriguez, 411 U.S. 475, 485 (1973)
- Zadvydas v. Davis, 533 U.S. 678, 687 (2001)
- Jennings v. Rodriguez, 583 U.S. 281, 288-89 (2018)
- Pu Sacvin v. De Anda-Ybarra, 2025 WL 3187432, at *1, *3 (D.N.M.)
- Barco Mercado v. Francis, 2025 WL 3295903, at *13 (S.D.N.Y.)
- Danierov v. Noem, 2026 WL 45288, at *2 (D.N.M.)
- DHS v. Thuraissigiam, 591 U.S. 103, 140 (2020)
- Benziane v. U.S., 960 F. Supp. 238, 241 (D. Colo. 1997)