

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

Darwin Silva Cova v. Michael T. Rose, et al.

Silva Cova v. Rose · No. 3:26-cv-101 · Decided February 11, 2026

SUMMARY

The United States District Court for the Western District of Pennsylvania considers a Venezuelan detainee’s petition for habeas corpus under 28 U.S.C. § 2241. The court holds that discretionary detention under 8 U.S.C. § 1226(a), rather than mandatory detention under § 1225(b)(2), applies and orders a bond hearing before a neutral immigration judge within ten days, while denying additional relief.

CASE DETAILS

COURT	United States District Court for the Western District of Pennsylvania
WRITING FOR THE COURT	William S. Stickman IV
JURISDICTION	United States District Court for the Western District of Pennsylvania
DECIDED	February 11, 2026
DOCKET	3:26-cv-101
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought habeas relief under 28 U.S.C. § 2241 challenging his immigration detention and requesting a bond hearing. The district court granted the petition in part and denied it in part.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review. It adjudicates the § 2241 petition and determines the governing statutory detention provision.
PRECEDENTIAL VALUE	Unpublished district court memorandum order; precedential status unknown.
PARTIES	Darwin Silva Cova v. Michael T. Rose, et al.

TOPICS

- immigration detention
- federal habeas corpus
- removal proceedings
- exhaustion of remedies
- statutory interpretation

PRACTICE AREAS

immigration detention

federal habeas corpus

removal proceedings

administrative law

QUESTIONS PRESENTED

1. Whether exhaustion of administrative remedies should be excused when pursuing an appeal to the Board of Immigration Appeals would be futile in light of recent BIA decisions.
2. Whether Petitioner's detention is governed by the discretionary detention provision in 8 U.S.C. § 1226(a) or the mandatory detention provision in 8 U.S.C. § 1225(b)(2).
3. Whether Petitioner is entitled to a bond hearing before a neutral immigration judge.
4. Whether the district court could enjoin Petitioner's transfer or award additional relief.

HOLDINGS

1. Exhaustion was not required because pursuing the pending administrative appeal would have been futile in light of recent Board of Immigration Appeals decisions.
2. Section 1226(a), rather than the mandatory detention provision of § 1225(b)(2), governs detention of an alien who is already present in the United States and is not seeking admission at a port of entry.
3. Because Petitioner's detention is governed by 8 U.S.C. § 1226(a), he has a statutory right to a bond hearing before a neutral immigration judge.
4. The petition was denied to the extent it sought additional relief because the district court lacked jurisdiction to enjoin Petitioner's transfer.

FACTUAL BACKGROUND

Darwin Silva Cova, a Venezuelan citizen, entered the United States on or about March 2, 2024, after an illegal entry and was initially released on an order of recognizance. He was rearrested on May 21, 2025, and remained detained while removal proceedings continued. An immigration judge denied his request for a bond hearing for lack of jurisdiction, and his appeal to the Board of Immigration Appeals was pending when he sought habeas relief.

PROCEDURAL HISTORY

Petitioner was detained after re-arrest while removal proceedings were ongoing. An immigration judge denied his request for a bond hearing for lack of jurisdiction under *Matter of Li*, and his appeal to the Board of Immigration Appeals remained pending when he filed this § 2241 petition. The district court excused exhaustion as futile, ordered a bond hearing under 8 U.S.C. § 1226(a), and denied additional relief, including relief concerning transfer.

DISPOSITION

other

REMAND INSTRUCTIONS

Within ten days of the order, Petitioner must receive a bond hearing before a neutral immigration judge pursuant to 8 U.S.C. § 1226. The petition was otherwise denied, including any request to enjoin Petitioner's transfer.

CASES CITED

- Matter of Li, 29 I. & N. Dec. 66 (BIA 2025)
- Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025)
- Jennings v. Rodriguez, 583 U.S. 281, 303 (2018)
- Bethancourt Soto v. Soto, No. 25-CV-16200, 2025 WL 2976572, at *2 (D.N.J. Oct. 22, 2025)
- Buenrostro-Mendez v. Bondi, --- F.4th ----, 2026 WL 323330 (5th Cir. Feb. 6, 2026)
- Abioye v. Warden Moshannon Valley Correctional Center, --- F.4th ----, 2026 WL 263483 (3d Cir. Feb. 2, 2026)

OPINION

ROSE

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARWIN SILVA COVA,

Petitioner, Civil Action No. 3:26-cv-101 v. Hon. William S. Stickman IV MICHAEL T. ROSE, et al, Respondents.

MEMORANDUM ORDER

Pending before the Court is Petitioner's Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. (ECF No. 1). Petitioner, a citizen of Venezuela, is currently detained at Lewisburg United States penitentiary. He entered the United States on or about March 2, 2024, after making illegal entry and was detained by U.S. Border Patrol. The next day, he was released on an Order of Recognizance. Petitioner was rearrested on May 21, 2025. His removal proceedings remain ongoing. On July 16, 2025, the immigration judge denied his request for a bond hearing for lack of jurisdiction based on Matter of Li, 29 I. & N. Dec. 66 (BIA 2025). Petitioner appealed that decision to the Board of Immigration Appeals ("BIA"), and the appeal remains pending. (ECF No. 1 ¶ 46). The Court finds the fact that Petitioner has not fully exhausted all of his administrative remedies prior to filing his habeas petition to be of no moment as it is an exercise in futility given the recent decisions of the Board of Immigration Appeals (i.e., Matter of Li and Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025)). Petitioner asserts that he is subject to discretionary detention pursuant to 8 U.S.C. § 1226(a) and not mandatory detention under § 1225(b)(2) and, therefore, that he is entitled to a bond hearing. The Court agrees. Section 1226 applies to aliens who are "already present in the United States[,]" Jennings v. Rodriguez, 583 U.S. 281, 303 (2018), while the mandatory detention provision of § 1225 governs detention of "applicants for

admission” to the United States. *Bethancourt Soto v. Soto*, No. 25-CV-16200, 2025 WL 2976572, at *2 (D.N.J. Oct. 22, 2025). The Court joins the overwhelming majority of district courts in holding that § 1226(a), rather than the mandatory detention provision of § 1225(b), applies to aliens similarly situated to Petitioner, who are not seeking admission at a port of entry but rather are already present in the country. The Court disagrees with the decision of the United States Court of Appeals for the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, --- F.4th ----, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Petitioner’s detention is governed by § 1226(a) and the Court holds that he has a statutory right to a bond hearing. AND NOW, this 11th day of February 2026, IT IS HEREBY ORDERED that Petitioner’s Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 1) is GRANTED IN PART and DENIED IN PART. It is GRANTED in that within ten (10) days of this Order, Petitioner must receive a bond hearing before a neutral immigration judge pursuant to 8 U.S.C. § 1226. IT IS FURTHER ORDERED that the petition is DENIED to the extent it requests any additional relief. The Court lacks jurisdiction to enjoin Petitioner’s transfer. In light of the recent opinion of the United States Court of Appeals for Third Circuit, *Abioye v. Warden Moshannon Valley Correctional Center*, --- F.4th ----, 2026 WL 263483 (3rd Cir. Feb. 2, 2026), should he wish to do so, Petitioner shall file any motion for costs and fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) within ten (10) days. BY THE COURT: /s/William S. Stickman IV
WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE