

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
INDIANA

Luis Rodriguez Cantu v. Warden

No. 3:26cv337 DRL-SJF (N.D. Ind. May 5, 2026) · No. 3:26cv337 DRL-SJF · Decided May 5, 2026

OPINION

Warden

PER CURIAM.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF INDIANA

SOUTH BEND DIVISION

LUIS RODRIGUEZ CANTU,

Petitioner, v. CAUSE NO. 3:26cv337 DRL-SJF

WARDEN,

Respondent.

OPINION AND ORDER

Immigration detainee Luis Rodriguez Cantu, by counsel, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, alleging he is unlawfully confined in violation of the laws or Constitution of the United States. Mr. Rodriguez Cantu is a citizen of Mexico. Immigration records reflect that he has gone back and forth between Mexico and the United States multiple times over the past 20 years [6-2]. He was in the United States in 2005, when he incurred a criminal conviction in Indiana for residential entry, after which it appears he voluntarily returned to Mexico. In 2009, he was encountered by United States Border Patrol agents seven different times near the United States-Mexico border in Arizona, and was allowed to voluntarily return to Mexico each time. It can be discerned that at some later point he entered the United States without inspection, because he came to the attention of immigration officials again in 2020 when he was convicted of drunk driving in Indiana. He was taken into custody United States Immigration and Customs Enforcement (ICE) agents pursuant to an administrative warrant and served with a notice to appear in immigration court, but was later released upon payment of a bond. He subsequently filed a petition for a U-visa, a program for crime victims who cooperate with law enforcement, and was approved for work authorization by the United States Citizenship and Immigration Services (USCIS) while awaiting a resolution of his petition.¹ His removal case was administratively closed in October 2023. In June 2025, he was arrested on charges of domestic battery and disorderly conduct in Hendricks County, Indiana. He was later convicted of disorderly conduct whereas the other charge was dismissed. In January 2026, his removal proceedings were reopened, and he was arrested by ICE agents in Indiana pursuant to an administrative warrant [6-

2].² He is currently detained at Miami Correctional Facility (MCF) pending the outcome of his removal proceedings. He argues that he has been unlawfully denied an opportunity for release on bond because the government has categorized him as ineligible for bond under 8 U.S.C. § 1225(b)(2). He seeks immediate release from custody or other relief the court “deems just and proper.” In an order to show cause, the court directed the respondent to answer the petition in light of *De Jesús Aguilar v. English*, No. 3:25cv898, 2025 WL 3280219, 8 (N.D. Ind. Nov. 25, 2025), appeal docketed, No. 26-1145 (7th Cir. Jan. 26, 2026), which joined a large majority of 1. The U-visa program, enacted in October 2000, provides a pathway for qualifying individuals to apply for work authorization and to remain in the United States. *Calderon-Ramirez v. McCament*, 877 F.3d 272, 274 (7th Cir. 2017). There is a statutory cap on the number of U-visas that can be granted each year, resulting in a waiting list of individuals who are determined to be preliminarily eligible for a U-visa. *Id.* 2. The Attorney General, or her delegate, may decide to re-detain a noncitizen who is out on bond where there are “changed circumstances,” such as where the noncitizen has arrests or convictions while out on bond. *In re Guerra*, 24 I. & N. Dec. 37 (BIA 2006). The parties do not argue that Mr. Rodriguez Cantu’s prior bond has any impact on his current detention, so the court does not explore the matter further. Other courts in concluding that § 1225(b)(2) does not apply to noncitizens when they are not “seeking admission” within the statute’s meaning. See also *Singh v. English*, No. 3:25cv962, 2025 WL 3713715, 5 (N.D. Ind. Dec. 23, 2025) (“In short, under § 1225(b)(2), an alien must be an ‘applicant for admission,’ and the alien must be ‘seeking admission,’ and an examining immigration officer must determine that this alien ‘is not clearly and beyond a doubt entitled to be admitted’ for mandatory detention to occur under this subsection.”). The respondent was instructed to address why this case differs from *Aguilar*, why the court should examine subject matter jurisdiction differently, and whether there is cause to address the outcome differently. That response has been filed, as has Mr. Rodriguez Cantu’s reply. The Warden (through his federal counsel) repeats his arguments from *Aguilar* and other recent cases that the court lacks jurisdiction over the petition and that Mr. Rodriguez Cantu’s detention is authorized by § 1225(b)(2). These arguments were rejected in *Aguilar* and *Singh* (and other decisions). See *Singh v. English*, No. 3:25cv962, 2025 WL 3713715 (N.D. Ind. Dec. 23, 2025) (Leichty, J.); see also *Mejia Diaz v. Noem*, No. 3:25cv960, 2025 WL 3640419 (N.D. Ind. Dec. 16, 2025) (Brisco, J.). The court continues to be of the view that jurisdiction is secure insofar as this opinion goes, and that § 1225(b)(2) cannot reasonably be interpreted in the manner urged by the government. Notably, the court of appeals recently held in deciding a motion for a stay pending appeal that the government was not likely to succeed on the merits of its argument that the mandatory detention provision contained in § 1225(b)(2) applies to individuals who are arrested in the interior of the United States. See *Castañon-Nava v. U.S. Dep’t of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025). Though preliminary, that opinion offers early echoes of what this court has done. The Second Circuit recently adopted this same approach. The court also read the split decisions from the Fifth Circuit and Eighth Circuit. These opinions, together with others, illustrate

just how complicated this patchwork of statutes is, but the court remains persuaded in its current course under *Aguilar* and *Singh* until guidance comes from this circuit. The question remains whether there is anything unique here that would warrant a different conclusion than that reached in both *Aguilar* and *Singh*. The court can find no such reason. Whether Mr. Rodriguez Cantu is an “applicant for admission” within the meaning of § 1225(b)(2), he cannot be said to be “seeking admission” for the same reasons the court articulated in both *Aguilar* and *Singh*. That leads the court to 8 U.S.C. § 1226(a), the “default rule” for detention of noncitizens who are “already present in the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). “On a warrant issued by the Attorney General, an alien may be arrested and detained” while removal proceedings are pending, and the Attorney General “(1) may continue to detain the [noncitizen]; and (2) may release the [noncitizen] on (A) bond . . . or (B) conditional parole” until removal proceedings conclude. 8 U.S.C. § 1226(a). The court, as it always does, begins with the statute’s plain language. It is permissive, not mandatory, and it affords an election (insofar as the limitations in § 1226(c) do not apply of course).³ 3 The Warden does not argue that Mr. Rodriguez Cantu’s criminal history makes him ineligible for bond under 8 U.S.C. § 1226(c). It would be inappropriate for the court, as a neutral arbiter, to construct arguments for the parties. See *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (party presentation rule). Immigration officials issued a warrant for Mr. Rodriguez Cantu’s arrest. [ECF 6-2 at 5.] By statute, a noncitizen detained pursuant to a warrant may be released by the Attorney General (subject to certain statutory limitations that no one argues apply here), or he may be detained pending a decision on whether he will be removed from the United States. See 8 U.S.C. §§ 1226(a), (c). Our high court likewise has recognized the permissive nature of this language. See *Johnson v. Guzman Chavez*, 594 U.S. 523, 526-27 (2021); *Jennings*, 583 U.S. at 306. The Attorney General has delegated her discretion by regulation—first, to specified immigration officers who may “release an alien not described in [§ 1226(c)(1) (regarding criminal aliens)], under [bond or conditional parole]; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). That is called an initial custody determination. After that initial custody determination, a noncitizen may apply to an immigration judge for a custody redetermination, and the immigration judge is authorized to exercise the authority in § 1226 “to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released.” 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1); see also 8 C.F.R. § 1003.19 (detailing procedures for custody or bond redeterminations by an immigration judge). When a noncitizen files this motion, an immigration judge, under immigration court rules, must “in general” schedule a “hearing for the earliest possible date,” though in “limited circumstances” the immigration judge may rule on a bond redetermination request without a hearing. *Immig. Ct. Practice Manual* § 9.3(d). A noncitizen may appeal a decision relating to bond and custody determinations to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3). Both noncitizens and the

government alike must comply with our immigration laws as they are written and as they must work within constitutional demands. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The government has predetermined the procedures that apply to noncitizens who are arrested and detained under § 1226, and due process requires merely that these procedures be fairly given, not taken away. See *Accardi*, 347 U.S. at 266-68; see, e.g., *Jideonwo v. I.N.S.*, 224 F.3d 692, 697 (7th Cir. 2000); *Montilla v. I.N.S.*, 926 F.2d 162, 166 (2d Cir. 1991). Mr. Rodriguez Cantu gives no reason to believe this process is insufficient. The court will order no more and no less than what is expected of immigration officials by law. See *Accardi*, 347 U.S. at 268; see also *United States v. Nixon*, 418 U.S. 683, 696 (1974) (“So long as this regulation [delegating Attorney General’s discretion to a Special Prosecutor] remains in force the Executive Branch is bound by it, and indeed the United States as the sovereign composed of the three branches is bound to respect and to enforce it.”). The court has the same expectation of compliance for the petitioner—follow the rules. It appears Mr. Rodriguez Cantu did not seek a custody redetermination before an immigration judge before filing his petition. When “exhaustion of administrative remedies is not statutorily mandated,” “sound judicial discretion governs” whether it must be done. *Gonzalez v. O’Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004) (citation omitted). A court may require administrative exhaustion in § 2241 cases challenging a noncitizen’s detention as a matter of judicial economy and administrative comity. *Id.* at 1017. A petitioner “with a statutory argument that has a reasonable prospect of affording him relief may not skip the administrative process and go straight to federal court,” *id.* at 1018, though “individual interests demand that exhaustion be excused when . . . appealing through the administrative process would be futile because the agency . . . has predetermined the issue,” *id.* at 1016. Perhaps Mr. Rodriguez Cantu thought it futile, because an immigration judge might follow *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), but thus far in this circuit that guidance has been found erroneous such that, as the days pass, that futility seems harder to presume. At the same time, maybe only a circuit decision will make it so. Based on the early stages of now many § 2241 petitions and an unbroken record of denials of custody redeterminations (even when noncitizens have been arrested pursuant to a warrant like he was) because immigration officials believe they must be classified under § 1225(b)(2), the court finds there was no reasonable prospect of success, absent a determination by the court that he must be classified under § 1226(a), not § 1225(b)(2). Recent proceedings in a case out of California suggest that *Hurtado* remains a barrier to relief for petitioners like Mr. Rodriguez Cantu. In February 2026, a judge in the Central District of California issued an order vacating *Hurtado* on behalf of a nationwide class of individuals who were arrested by ICE within the interior of the United States and denied an opportunity for bond. See *Bautista v. Santacruz*, No. 5:25cv01873, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026), appeal docketed, *In re Lazaro Maldonado Bautista*, No. 26-1044 (9th Cir. Feb. 23, 2026). The government has appealed, and, at the government’s request, the Ninth Circuit recently stayed the court’s class certification order and

final judgment “insofar as they extend beyond the Central District of California,” and stayed the court’s post-judgment order vacating Hurtado in its entirety. Maldonado Bautista, No. 26-1044 (9th Cir. order dated Mar. 31, 2026). The district judge’s decision vacating Hurtado is thus unlikely to change the outcome of a custody redetermination motion filed by an individual like Mr. Rodriguez Cantu, who is outside of California. These recent proceedings also indicate that the government remains committed to its interpretation of § 1225(b)(2) notwithstanding the prior rulings of this court and others. This doesn’t affect the court’s jurisdiction, but it does affect Mr. Rodriguez Cantu’s relief. The appropriate remedy is to put the ball in his court to file a motion for custody redetermination in his pending removal proceedings, with the benefit of a finding from the court that he is not categorically ineligible for bond under 8 U.S.C. § 1225(b)(2). The court likewise must deny immediate release because Mr. Rodriguez Cantu has not met his burden of showing his current detention unlawful under § 1226. He argues that the court should require the government to bear the burden of proving that he should not be released at any forthcoming custody redetermination hearing, whereas under existing procedures “[t]o secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” Johnson, 594 U.S. at 527; see also 8 C.F.R. § 236.1(c)(8) (“alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding”). It is not the court’s job to rewrite the law. And his argument is effectively premature, indeed unripe, when no one can say how the government may proceed. The same goes for his argument that he cannot get a fair custody redetermination hearing because the Executive Office of Immigration Review is a “compromised adjudicatory body.” If he is given a custody redetermination hearing, he may in fact prevail. Without a prior denial on the merits alleged to be erroneous, the court leaves the parties to follow their process under § 1226. For these reasons, the court:

- (1) DENIES the petition [1], except to FIND that Luis Rodriguez Cantu must be classified under 8 U.S.C. § 1226(a), including for purposes of any custody redetermination;
- (2) DENIES the motion for expedited ruling as unnecessary [8]; and
- (3) DIRECTS the clerk to enter final judgment and to close this case.

SO ORDERED. May 5, 2026 s/ Damon R. Leichty Judge, United States District Court