IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge S. Kato Crews

Civil Action No. 1:26-cv-01099-SKC

JIORDAN HECTOR LOPEZ RICARDO,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary of U.S. Department of Homeland Security; and
PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents.

PETITIONER'S BRIEFING IN RESPONSE TO ECF NO 9

INTRODUCTION

Petitioner, JIRODAN HECTOR LOPEZ RICARDO, by and through undersigned counsel respectfully submits this supplemental briefing pursuant to the Court's Order at ECF No. 9. Specifically, the Court wanted the parties to address (1) whether, notwithstanding the immigration judge's grant of Ricardo's application for Adjustment of Status that is currently on appeal, Ricardo may be detained under 8 U.S.C. § 1226(a); and (2) what effect the grant of Ricardo's application for Adjustment of Status has on Ricardo's due process claims; and (3) whether the appeal has any effect on the due process considerations.

ARGUMENTS

I. After the Immigration Judge Granted Adjustment of Status, Ricardo Was No Longer Properly Treated as an Applicant for Admission

Respondents' detention theory depends on treating Ricardo as though he remains merely an "applicant for admission" subject to the mandatory-detention framework of § 1225. That characterization does not fit the posture of this case. The Immigration Judge granted Ricardo's application for Adjustment of Status. Ricardo is not subject to § 1225 detention because there is no legally permissible ground on which to continue detaining him in connection with his removal proceedings and because § 1225 plainly does not apply to him in the first place.

In *Concha-Gonzalez v. Noem*, Judge Sweeney rejected Respondents' reliance on § 1225 and their effort to characterize a Cuban national with a *pending* CAA-based adjustment posture as an "applicant for admission" subject to mandatory detention. *Concha-Gonzalez v. Noem*, No. 1:26-cv-00001-CNS (D. Colo. Jan. 26, 2026). The court emphasized that the mandatory detention provision does not apply to noncitizens who have been present in the Unites States for over two years. *See, e.g., Nava Hernandez v. Baltazar,* No. 1:25-cv-03094-CNS, 2025 WL 2996643, at *4 (D. Colo. Oct. 24, 2025) ("[T]he plain text and structure of § 1225 and § 1226 support a determination that § 1225(b)(2)(A)'s provision for mandatory detention does not apply to someone like [Petitioner], who has been residing [in] the United States for more than two years[.]") (quotations and citations omitted).

That reasoning applies even more strongly here. In *Concha-Gonzalez*, the district court was dealing with a *pending* CAA-based adjustment application *and still* concluded that Respondents' attempt to force the petitioner into § 1225's mandatory-detention framework lacked merit. Here, Ricardo is in a stronger posture—the Immigration Judge did not merely leave adjustment pending but granted it. If a pending adjustment application under a congressionally favored adjustment

scheme materially undermines Respondents' efforts to reduce a person to an "applicant for admission" for § 1225 purposes, then an already granted adjustment application does so a fortiori. Ricardo has also been present in the United States for more than four (4) years.

The label "applicant for admission" describes a person seeking entry or seeking initial permission to come in. Ricardo is no longer in that posture. He is physically present in the United States, has already invoked the adjustment mechanism Congress made available, and, most importantly, has already prevailed before the Immigration Judge on that application. Whatever Respondents may say about the appeal does not erase the adjudicative fact that a neutral decisionmaker has already determined Ricardo should be adjusted.

Accordingly, the Court should reject Respondents' effort to continue classifying Ricardo as an applicant for admission after the Immigration Judge granted his Adjustment of Status. Under the logic of *Concha-Gonzalez*, the adjustment framework materially alters that classification. Once adjustment has actually been granted, Respondents' applicant-for-admission theory becomes untenable.

II. The Grant of Adjustment of Status Substantially Strengthens Ricardo's Due Process Claims

Because Ricardo has been granted relief from removal, continued detention serves no legitimate purpose and, due solely to Respondents' appeal, there is no foreseeable end date to this detention. Such detention falls squarely outside the bounds of the INA, the Fifth Amendment, Supreme Court precedent, and decisions from this District. Ricardo's pre-removal order detention was lawful, if at all, only while a determination of removability was pending and he was considered removable. *See Demore v. Kim*, 538 U.S. 510, 528 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001). That is not the case here. Ricardo has been granted relief from removal and, therefore, it is substantially less likely that he will be removed. Detention, therefore, is no longer justified under

§ 1226(a). Respondents cannot unilaterally deprive Ricardo of due process simply by appealing, without some form of oversight.

Section 1226(a) authorizes arrest and detention only "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). By its own terms, then, § 1226(a) detention authority exists only while Respondents are in the process of deciding whether a noncitizen will, in fact, be removed. Once that question has been resolved in the noncitizen's favor, the statute's detention predicate disappears.

A grant of adjustment under the Cuban Adjustment Act resolves that question in a way that materially changes the detention analysis. The Act provides that the status of a qualifying Cuban national "may be adjusted . . . to that of an alien lawfully admitted for permanent residence," and "[u]pon approval" of the application, the Government must create a record of the person's admission for permanent residence. Pub. L. 89-732, § 1. The INA, in turn, defines "lawfully admitted for permanent residence" as the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant. 8 U.S.C. § 1101(a)(20). Thus, once Cuban Adjustment is granted, the person is no longer merely an applicant for permission to remain; he has been accorded immigrant status and lawful permanent residence.

That change in status matters because a person who has been granted lawful permanent residence is not, at that moment, someone as to whom a decision remains pending "whether [he] is to be removed." 8 U.S.C. § 1226(a). The Government has already made the opposite determination: it has approved the person to remain in the United States as a lawful permanent resident. Detention under § 1226(a) cannot continue after that point because the statute does not authorize detention simply because DHS may be dissatisfied with that result, may wish it had reached a different one, or may later pursue some different proceeding. The operative question

under § 1226(a) is whether a removal decision is presently pending, not whether the Government can imagine some future basis to place the person back into proceedings.

Applied here, once the Cuban Adjustment grant issued, Ricardo ceased to be a noncitizen pending a decision on removal and instead became a lawful permanent resident by operation of the approved adjustment. At that point, § 1226(a) no longer supplied detention authority. If DHS believed there were some basis to challenge that status, it had to proceed through the mechanisms Congress provided for that circumstance, not continue relying on a detention statute whose textual trigger had already expired. Continued detention under § 1226(a) after approval of Cuban Adjustment therefore exceeds the statute's plain terms.

Even if this Court concludes that the pending appeal means § 1226(a) remains technically available, the grant of Adjustment of Status fundamentally alters the due process analysis. Before the Immigration Judge ruled, Respondents could at least argue that Ricardo was being detained while the Government pursued an unresolved question of removability. After the Immigration Judge granted adjustment, however, Ricardo's detention no longer rests on an unresolved initial determination. It continues despite the fact that a neutral adjudicator has already concluded that Ricardo should remain in the United States as a lawful permanent resident.

With respect to the rights of a noncitizen held in civil immigration detention, as Ricardo is here, "Supreme Court jurisprudence emphasizes . . . the government's need to show a compelling justification for such detention in the absence of an adjudicated crime." *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211, at *8 (D. Colo. July 2, 2019). Indeed, "the Supreme Court has held that civil detention violates due process absent 'certain special and 'narrow' nonpunitive 'circumstances,' where a special justification . . . outweighs the 'individual's

constitutionally protected interest in avoiding physical restraint.'" *Id.* (citing *Zadvydas*, 533 U.S. at 690).

Ricardo's private liberty interest becomes even more compelling now that he has prevailed on the merits before the Immigration Judge. He is no longer merely seeking relief; he has obtained it. Continued detention under those circumstances is more difficult to justify because it imposes severe physical restraint on a person whom the adjudicator charged with deciding his removability has already determined should be permitted to remain lawfully in this country.

At the same time, Respondents' interest in continued detention is weaker than it was before the grant of relief. Respondents cannot invoke the same generalized interest in ensuring the availability of a potentially removable noncitizen when the merits adjudication has already come out in Ricardo's favor. Respondents may still possess an interest in pursuing appellate review, but that is not the same as an interest in continuing to detain Ricardo as though removability remained wholly undecided. Once the Immigration Judge granted adjustment, Respondents' asserted justification for detention became contingent, provisional, and dependent on its success in overturning that grant on appeal.

The risk of erroneous deprivation also increases after a grant of Adjustment of Status. If detention continues automatically notwithstanding a merits ruling in Ricardo's favor, then Ricardo is deprived of liberty based not on a current neutral finding that detention is warranted, but on inertia and on Respondents' unilateral choice to continue litigating. That is precisely when due process concerns are at their height. The changed posture of the case requires meaningful recognition in the detention analysis. Otherwise, a noncitizen who has already prevailed before the Immigration Judge can remain detained indefinitely during appeal without any meaningful accommodation of the merits determination already entered in his favor.

This concern is especially acute because the Board has emphasized that bond proceedings are "separate and distinct" from removal proceedings and that a grant of relief pending appeal is not itself dispositive in bond proceedings. That proposition may describe the agency's internal custody framework, but it only underscores why judicial review is necessary here. If the agency's position is that a merits grant does not itself protect a detainee from continued incarceration during appeal, then constitutional due process must supply the limiting principle. Otherwise, Respondents could continue to detain a person even after he has prevailed on the merits simply by filing an appeal and treating the grant of relief as functionally irrelevant to custody.

Due process does not permit that result. At a minimum, once Ricardo obtained a grant of Adjustment of Status, continued detention required far more than the bare fact of a pending appeal. It required process that meaningfully accounted for the changed merits posture and the sharply diminished justification for confinement. Because Ricardo's detention continued notwithstanding the Immigration Judge's grant of relief, his due process challenge remains not only live, but stronger than before.

III. The Pending Appeal Does Not Defeat Riccardo's Due Process Claims and If Anything, Heightens the Constitutional Concern

The existence of the appeal does not moot Ricardo's due process claims or render them less substantial. To the contrary, the appeal is the very reason those claims remain urgent. If there were no appeal, Ricardo's favorable adjudication would have ended the dispute over whether he may remain in the United States. The appeal is what allows Respondents to continue detaining Ricardo despite the Immigration Judge's grant of Adjustment of Status. That effect of the appeal is to heighten, not diminish, the constitutional concerns presented by Ricardo's continued detention.

Ricardo does not contend that his proceedings have "terminated" as Respondents repeatedly posited. ECF No. 8 at 7. Rather, Ricardo's point was that the grant of Adjustment of Status materially changed the legal and constitutional posture of his detention, and Respondents cannot treat that grant as though it had no consequence whatsoever simply because they elected to appeal.

First, the appeal prolongs detention after a merits victory. The longer detention continues after Ricardo has already obtained relief before the Immigration Judge, the harder it becomes to justify custody as merely incidental to an unresolved immigration proceeding. What began as pre-decision detention increasingly resembles detention maintained despite the fact that the adjudicator charged with deciding Ricardo's case has already ruled in his favor.

Second, the appeal does not itself supply an individualized factual basis for detention. An appeal is a procedural mechanism. It is not a finding that Ricardo is dangerous, a flight risk, or otherwise someone whose continued incarceration is necessary. Yet if Respondents' position is accepted, the mere filing of an appeal would permit detention to continue even after Ricardo has secured relief. Due process requires more than that.

Third, treating the appeal as dispositive would create a detention scheme in which Respondents can preserve detention after losing on the merits simply by continuing to litigate. That is particularly troubling where the liberty deprivation is severe and immediate, while Respondents' contrary position has already failed before the Immigration Judge. The Constitution does not allow the significance of that favorable merits ruling to be suspended entirely for detention purposes merely because the Government seeks further review.

To be clear, Ricardo does not contend that the filing of an appeal is legally irrelevant. It matters for administrative finality. But administrative non-finality and constitutional sufficiency

are not the same thing. The fact that Respondents may continue to litigate the merits does not answer whether it may continue to incarcerate Ricardo without running afoul of due process after he has already obtained a grant of Adjustment of Status from the Immigration Judge. That is the question before this Court, and the answer should be no.

In short, the pending appeal does not neutralize Ricardo's due process claims. It sharpens them. The appeal may explain why Respondents seek to maintain custody, but it does not justify treating Ricardo as though the Immigration Judge's grant of Adjustment of Status never happened. Once that grant issued, due process required the Government's detention rationale to account for the reality that Ricardo had already prevailed on the merits before a neutral adjudicator. Because Respondents continued to detain him notwithstanding that grant, Ricardo's due process challenge remains fully viable and compelling.

CONCLUSION

For the reasons set forth above, Ricardo's continued detention cannot be squared with either the statutory framework or the Fifth Amendment. After the Immigration Judge granted his application for Adjustment of Status, Respondents could no longer treat him as though he remained in the same posture as a noncitizen still awaiting an initial determination of whether he may remain in the United States. At a minimum, that grant of relief materially altered the legal and constitutional landscape. Ricardo had already prevailed before the neutral adjudicator charged with deciding his case, yet he remained detained solely because Respondents elected to continue litigating. The pendency of that appeal may bear on administrative finality, but it does not itself supply a lawful detention basis, nor does it diminish the weight of Ricardo's liberty interest. If anything, it underscores the constitutional concern by permitting detention to continue notwithstanding a merits determination in Ricardo's favor, without any correspondingly sufficient

justification for continued confinement. The Court should therefore reject Respondents' detention theory and grant the requested relief.

Dated this 10th day of April 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2026, I electronically filed the foregoing **Petitioner's Briefing in Response to ECF No 9** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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