

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA**

Nicolas Vega Sanchez v. Kristi Noem, et al.

Sanchez · No. 0:25-CV-62677-MIDDLEBROOKS/AUGUSTIN-BIRCH · Decided January 20, 2026

OPINION

Sanchez

PER CURIAM.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:25-CV-62677-MIDDLEBROOKS/AUGUSTIN-BIRCH

NICOLAS VEGA SANCHEZ,

Petitioner, v. KRISTI NOEM, et al., Respondents. _____/

REPORT AND RECOMMENDATION ON

PETITIONER’S VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

This cause comes before the Court on Petitioner Nicolas Vega Sanchez’s Verified Petition for Writ of Habeas Corpus. DE 1. The Honorable Donald M. Middlebrooks, United States District Judge, referred the Petition to the undersigned United States Magistrate Judge to take all action required by law. DE 5. The Court ordered Respondents to show cause why Petitioner’s Petition should not be granted, and Respondents filed a response to the Court’s Order to show cause. DE

12. Having carefully considered the briefing and being otherwise fully advised, the Court

RECOMMENDS ordering Respondents to either afford Petitioner an individualized bond hearing before an immigration judge within seven days or release him. I. Background This case is one of many cases around the country stemming from the Department of Homeland Security’s (“DHS”) recent changes to its interpretation of the Immigration and Nationality Act’s (“INA”) detention provisions and the Board of Immigration Appeals’ (“BIA”) agreement with that interpretation in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). On July 8, 2025, DHS informed Immigration and Customs Enforcement (“ICE”) employees that 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226, applies to all non-citizens present in the United States who have “not been admitted . . . whether or not at a designated port of arrival.” See *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025) (quoting ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Doc. No. 25071607 (July 8, 2025)). As such, DHS has taken the position that non-citizens present in the United States who have not been admitted or paroled are subject to mandatory detention without the possibility of bond. *Id.* On September 5, 2025, BIA agreed with this interpretation, issuing a binding ruling in *Matter of Yajure Hurtado* that immigration judges lack the authority to hear bond requests or to

grant bonds to non-citizens who are present in the United States without admission because those non-citizens are properly detained under 8 U.S.C. § 1225(b)(2). See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). With this overarching background in mind, the Court turns to the details of this case. Petitioner is a native and citizen of Mexico who has resided in the United States for the past twenty-five years. DE 1 ¶ 1. On November 23, 2025, ICE agents arrested Petitioner and took him into ICE custody. Id. ¶ 6. Petitioner was originally detained at an ICE facility in New Jersey, but he has since been transferred to the Broward Transitional Center in Broward County. Id. ¶ 7; DE 1-2. Through the issuance of a Notice to Appear, removal proceedings began against Petitioner, and Petitioner is charged in the Notice to Appear with being “an alien present in the United States who has not been admitted or paroled.” DE 12-1. Petitioner’s master calendar hearing was scheduled for January 13, 2026. DE 12-6 ¶ 9. II. Analysis

In his Petition, Petitioner maintains that he is being improperly detained without the possibility of a bond hearing under 8 U.S.C. § 1225(b)(2) and requests for the Court to grant habeas relief and order his immediate release. DE 1. In response, Respondents contend that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2), which does not provide the possibility of bond. DE 12. As explained below, Respondents’ position has been almost universally rejected by courts across the country, including this Court. Accordingly, the Court recommends ordering Respondents to either afford Petitioner an individualized bond hearing before an immigration judge within seven days or release him. The Court explains below. A. The Correct Respondent As an initial matter, Respondents assert that Petitioner has not named the correct Respondent. Id. at 1 n.1. Respondents assert that Cynthia Swain is the immediate custodian of Petitioner and is thus the one and only proper Respondent for this matter. Id. Petitions for writ of habeas corpus shall be directed “to the person having custody of the person detained.” 28 U.S.C. § 2243. Since Respondents contend that Cynthia Swain is the current custodian of Petitioner, the Court recommends substituting Cynthia Swain in as a Respondent and dismissing the remaining Respondents. See *Cong v. McNeil*, No. 205-CV-131-FTM-29SPC, 2008 WL 4328223, at *1 n.1 (M.D. Fla. Sept. 17, 2008) (substituting correct respondent and dismissing incorrect respondent); see also *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (“[T]here is generally only one proper respondent to a given prisoner’s habeas petition.”). B. The Appropriate Statute Governing Petitioner’s Detention Respondents contend that Petitioner’s Petition should be denied because he is properly detained under 8 U.S.C. § 1225(b)(2), as opposed to 8 U.S.C. § 1226. DE 12 at 4–12. Specifically, Respondents maintain that 8 U.S.C. § 1225(b)(2) applies to all non-citizens who are present in the United States without admission. Id. This argument has been rejected by this Court and countless courts around the country.¹ See *Gonzalez v. Noem*, No. 25-CV-62261-DMM, at docket entry 25 (S.D. Fla. Dec. 23, 2025) (concluding that 8 U.S.C. § 1226 applies to the detention of non-citizens present in the United States who have not been admitted or paroled); see, e.g., *Merino*, 2025 WL 2941609, at *3 (“DHS’s interpretation of the applicability of § 1225(b)(2), rather than § 1226, to noncitizens who have resided in the count[r]y for years and were already in

the United States when apprehended, runs afoul of the statutes’ legislative history, plain meaning, and interpretation by courts in the First, Second, Fifth, Sixth, Eighth, and Ninth Circuits.”); *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025) (“[N]umerous courts that have examined the interpretation of section 1225 articulated by Respondents—particularly following the BIA’s decision in *Matter of Yajure Hurtado*—have rejected their construction and adopted Petitioner’s.”); *Lopez v. Hardin*, No. 2:25-CV-830-KCD- NPM, 2025 WL 3022245, at *5 (M.D. Fla. Oct. 29, 2025) (“[A]ccepting Respondents’ argument would leave § 1226 superfluous. Interpreting § 1225 to govern all noncitizens present in the country who had not been admitted leaves § 1226 with no apparent application.”); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *12 (E.D.N.Y. Oct. 6, 2025) (“[I]n the approximately two and one-half-months since Respondents began to broadly invoke § 1225(b)(2)(A) to justify the mandatory detention of noncitizens who already reside within the United States, well over a dozen federal courts around the country have rejected Respondents’ novel and illogical interpretation of the INA.”); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) (“The government’s argument that 1 Petitioner includes an appendix citing no fewer than 288 cases from around the country that have purportedly come to the same conclusion. See DE 1-5 (collecting cases). section 1225(b)(2)(A) applies to all noncitizens present in the United States without admission is unpersuasive. The government’s proposed interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226;

(3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice. Other district courts have reached a similar conclusion.”); *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 784 (E.D. Mich. 2025) (“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border. The reading of the statutes supports this finding, as does every other Court that has had to address the distinction between Section 1225(b)(2)(A) and Section 1226(a).”); *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) (“The Government argues that under the INA, all non-citizens in this country illegally are subject to mandatory detention. I agree with Petitioner that the Government has misread the INA, and that Demirel is entitled to a bond hearing before an Immigration Judge. Although there is no apposite appellate authority, there are 288 district court decisions addressing this issue. In all but six, the Government’s interpretation of the INA—the same interpretation it urges here—was rejected.” (citations omitted)). As explained by the Supreme Court, 8 U.S.C. § 1225(b) “primarily applies to aliens seeking entry into the United States,” whereas 8 U.S.C. § 1226 “applies to aliens already present in the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 298, 303 (2018). Here,

Petitioner's Notice to Appear charges him with being "an alien present in the United States who has not been admitted or paroled." DE 12-1. Notably, Petitioner was not charged as an "arriving alien." See *id.* As such, Petitioner's detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2). See, e.g., *Boffill v. Field Off. Dir.*, No. 25-CV-25179-JB, 2025 WL 3246868, at *6 (S.D. Fla. Nov. 20, 2025) ("[T]he NTA that DHS issued to Petitioner did not classify him as an 'arriving alien.' Instead, the NTA charged him as 'present in the United States without admission or parole.' This classification places him squarely within section 1226." (citations omitted)); *Merino*, 2025 WL 2941609, at *3 ("Petitioner, who has resided in the country for nearly a decade and was apprehended while already within the United States, not at the border, falls under § 1226(a), not § 1225(b)(2)"); *Patel v. Hardin*, No. 2:25-CV-870-JES-NPM, 2025 WL 3442706, at *5 (M.D. Fla. Dec. 1, 2025) ("It is undisputed that Patel has been in this country since 2011. His detention is thus governed by § 1226(a)."); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *8 (E.D. Mich. Sept. 9, 2025) ("[I]n the Notice to Appear, ICE marked Pizzaro Reyes as 'present in the United States,' and notably not as 'arriving.' The fact that the Notice to Appear listed 'arriving' and 'present' as two distinct options, and that ICE selected 'present,' reinforces how novel Respondents' proposed statutory interpretation is. Overall, the legislative history and agency guidance supports the argument that § 1226(a) applies to Pizarro Reyes."). III. Recommendation Having concluded that Petitioner's detention is governed by 8 U.S.C. § 1226(a), Petitioner is entitled to an individualized bond hearing before an immigration judge. See *Jennings*, 583 U.S. at 306 ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1))). The Court acknowledges that Petitioner does not explicitly ask for a bond hearing in his Petition and instead only requests an immediate release from immigration custody. See DE 1 at 17. However, 8 U.S.C. § 1226(a) affords discretion as to whether a non-citizen is detained or released. See 8 U.S.C. § 1226(a)(1)–

(2) (explaining that, pending a removal decision, the Attorney General may either continue to detain the non-citizen or release the non-citizen); 8 C.F.R. § 236.1(d)(1) ("[T]he immigration judge is authorized to exercise the authority. . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released"). Accordingly, the Court RECOMMENDS ordering Respondents to either afford Petitioner an individualized bond hearing before an immigration judge within seven days or release him. As for Petitioner's request for attorney's fees and costs pursuant to the Equal Access to Justice Act, the Court RECOMMENDS permitting Petitioner to move for attorney's fees and costs under the Equal Access to Justice Act if this Report and Recommendation is adopted. Although a party normally has fourteen days to serve and file written objections to any of the findings and recommendations in a report and recommendation, see 28 U.S.C. § 636(b)(1); S.D. Fla. Mag. R. 4(a), the circumstances of this matter warrant a shorter objection period. Within seven days of being served with a copy of this Report and Recommendation, any party may serve and file

written objections to any of the above findings and recommendations. The parties are hereby notified that a failure to timely object waives the right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1 (2014). DONE AND SUBMITTED in Chambers at Fort Lauderdale, Florida, this 20th day of January, 2026. GED \—

PANAYOTTA AUGUSTIN-BIRCH
UNITED STATES MAGISTRATE JUDGE