

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

Morales-Vichi v. Noem

Case No. 25-cv-3754-GPC-KSC (S.D. Cal. Dec. 30, 2025) · No. 25-cv-3754-GPC-KSC · Decided December
30, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 JORGE MORALES-VICHI, Case No.: 25-cv-3754-GPC-KSC 12 Petitioner,
ORDER GRANTING IN PART 13 v. PETITION FOR WRIT OF HABEAS CORPUS 14 Kristi
NOEM, in her official capacity as Secretary of Homeland Security; 15 [ECF No. 1] Christopher J.
LAROSE, in his official 16 capacity as Warden of Otay Mesa Detention Center; Gregory J. 17
ARCHAMBEAULT, in his official 18 capacity as San Diego Field Office Director, ICE
Enforcement Removal 19 Operations; Todd LYONS, in his official 20 capacity as Acting Director
of ICE; and Pamela BONDI, U.S. Attorney General; 21 IMMIGRATION AND CUSTOMS 22
ENFORCEMENT; DEPARTMENT OF HOMELAND SECURITY, 23 Respondents.

24 25 On December 23, 2025, Petitioner Jorge Morales-Vichi (“Petitioner”) filed a 26 petition for
writ of habeas corpus pursuant to 28 U.S.C. § 2241 seeking release from 27 1 custody. ECF No. 1
 (“Pet.”). Respondents filed a return to the petition on December 29, 2 2025. ECF No. 3 (“Ret.”).

For the following reasons, the Court GRANTS IN PART the 3 petition for a writ of habeas corpus.
The Court also VACATES the hearing set for January 4 9, 2026. 5 BACKGROUND 6 Petitioner
is a Mexican national who last entered the United States on October 1, 7 2007. Pet. ¶ 16.

On December 10, 2025, Petitioner was arrested detained by Respondents 8 at the Otay Mesa
Detention Center. Id. ¶ 17. He has remained in custody since that time. 9 Id. ¶18. Petitioner is
currently in removal proceedings, and his individual merits hearing is 10 scheduled for February
5, 2026. Pet. ¶ 19. 11 On December 23, 2025, Petitioner filed a petition for writ of habeas corpus.

ECF 12 No. 1. The Petition asserts that Petitioner’s detention violates the Immigration and 13
Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment. Pet. ¶¶ 23- 14 34.
Thus, Petitioner requests a writ of habeas corpus ordering Petitioner’s release, an award 15 of
attorneys’ fees to Petitioner, and any other relief the Court deems just and proper.

16 DISCUSSION 17 I. Legal Standard 18 Under 28 U.S.C. § 2241, a writ of habeas corpus may
be granted to any petitioner 19 who demonstrates that he is “in custody in violation of the
Constitution or laws or treaties 20 of the United States.” 28 U.S.C. § 2241(c)(3); see *Rasul v.*

Bush, 542 U.S. 466, 473 (2004). 21 The writ of habeas corpus is “available to every individual detained within the United 22 States.” Hamdi v. Rumsfeld, 542 U.S. 507, 525 (2004).

23 As explained by the Supreme Court, “the essence of habeas corpus is an attack by a 24 person in custody upon the legality of that custody, and... the traditional function of the 25 writ is to secure release from illegal custody.” Preiser v. Rodriguez, 411 U.S. 475, 484 26 (1973); Pinson v. Carvajal, 69 F.4th 1059, 1067 (9th Cir. 2023) (habeas actions limited to 27 1 challenges of the legality or duration of confinement).

A habeas petitioner bears the burden 2 of demonstrating that “[h]e is in custody in violation of the Constitution or laws or treaties 3 of the United States.” See Espinoza v. Sabol, 558 F.3d 83, 89 (1st Cir. 2009). 4 II. Merits: Whether the INA Subjects Petitioner to Mandatory Detention 5 The habeas petition raises an issue of statutory construction as to whether the 6 Immigration and Nationality Act (“INA”) subjects all applicants for admission, even non- 7 citizens who entered without admission or inspection and have resided in the United States 8 for years without lawful status, to mandatory detention for the duration of their immigration 9 proceedings.

If so, an immigration judge would lack the authority to entertain a bond 10 request. Petitioner contends that he is entitled to a bond hearing under 8 U.S.C. § 1226(a). 11 Respondents have also acknowledged that pursuant to Maldonado Bautista v. Santacruz, 12 No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 13 2025) Petitioner is detained under 8 U.S.C. § 1226(a) and is entitled to a bond hearing.

Ret. 14 at 2. 1 However, Respondents reserve the right to supplement its response in the event of a 15 stay of enforcement of the Bautista final judgment, appellate relief, or a change in DHS 16 policy. Id. Given the reservation, the Court will conduct a full analysis of the issue. 17 1. U.S.C. § 1225(b)(2)(A) and § 1226(a) 18 Noncitizens are detained during removal proceedings under two statutes: 8 U.S.C. 19 §§ 1225 and 1226.

Section 1225 governs inspection by immigration officers and expedited 20 removal proceedings for “applicants for admission” who are defined as an “alien present 21 in the United States who has not been admitted or who arrives in the United States.” 8 22 U.S.C. § 1225(a)(1). An applicant for admission “seeking admission or readmission to or 23 transit through the United States” is inspected by immigration officers.

Id. § 1225(a)(3). If 24 an applicant is deemed inadmissible after inspection, the applicant will be subject to 25 26 1 Page numbers are based on the CM/ECF pagination. 27 1 expedited removal “without further hearing or review,” unless an intention to apply for 2 asylum is indicated where the applicant would then be referred for a credible fear interview. 3 Id. § 1225(b)(1)(A)(i)-(ii).

For other applicants for admission, “if the examining 4 immigration officer determines that an alien seeking admission is not clearly and beyond a 5 doubt entitled to be admitted, the alien shall

be detained for a proceeding under section 6 1229a.” Id. § 1225(b)(2)(A). A limited exception provides that a “noncitizen detained 7 under [s]ection 1225(b)(2) may be released if she is paroled ‘for urgent humanitarian 8 reasons or significant public benefit’ pursuant to 8 U.S.C. § 1182(d)(5) (A).” *Jennings v. 9 Rodriguez*, 583 U.S. 281, 300 (2018).

Otherwise, “detention under § 1225(b)(2) is 10 considered mandatory... [and] [i]ndividuals detained under § 1225 are not entitled to a 11 bond hearing.” *Lepe v. Andrews*, -- F. Supp. 3d --, 2025 WL 2716910, at *3 (E.D. Cal. 12 Sept. 23, 2025) (internal quotation marks omitted) (quoting *Lopez Benitez v. Francis*, -- F. 13 Supp. 3d --, 2025 WL 2371588, at *3 (S.D.N.Y.

Aug. 13, 2025)). 14 In contrast, § 1226 addresses apprehension and detention of aliens and generally 15 governs the process of arresting and detaining aliens present in the United States, including 16 aliens who were inadmissible at the time of entry. *Jennings*, 583 U.S. at 288. Section 1226 17 states, “[o]n a warrant issued by the Attorney General, an alien may be arrested and 18 detained pending a decision on whether the alien is to be removed from the United States.” 19 8 U.S.C. § 1226(a).

Section 1226(c), however, “carves out a statutory category of aliens 20 who may not be released under § 1226(a),” which focuses on those who are inadmissible 21 or deportable because of certain crimes. *Jennings*, 583 U.S. at 296-97; 8 U.S.C. §§ 1226(a), 22 (c). 23 “When a person is apprehended under § 1226(a), an ICE officer makes the initial 24 custody determination,” *Rodriguez Diaz*, 53 F.4th 1189, 1196 (9th Cir.

2022) (citing 8 25 C.F.R. § 236.1(c)(8)), where the noncitizen “must demonstrate to the satisfaction of the 26 officer that such release would not pose a danger to property or persons, and that the alien 27 1 is likely to appear for any future proceeding.”).

After a decision has been made, the 2 noncitizen may request a bond hearing before an immigration judge. 8 C.F.R. § 3 236.1(d)(1). At the bond hearing, “the burden is on the non-citizen to ‘establish to the 4 satisfaction of the Immigration Judge... that he or she does not present a danger to persons 5 or property, is not a threat to the national security, and does not pose a risk of flight.’” 6 *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir.

2017) (citing *In re Guerra*, 24 I. & N. 7 Dec. 37, 38 (BIA 2006)). “Section 1226(a), therefore, establishes a discretionary detention 8 framework.” *Otilio B.F. v. Andrews*, -- F. Supp. 3d --, 2025 WL 3152480, at *5 (E.D. Cal. 9 Nov. 11, 2025) (citation and internal quotation marks omitted). 10 2. Statutory Interpretation of § 1225(b)(2) 11 “The starting point for our interpretation of a statute is always its language.” *Cnty.*

12 for *Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989) (citation omitted). “But 13 oftentimes the meaning—or ambiguity—of certain words or phrases may only become 14 evident

when placed in context.” *King v. Burwell*, 576 U.S. 473, 486 (2015) (internal 15 quotation marks and citation omitted).

In doing so, “a court ‘must interpret the statute as a 16 whole, giving effect to each word and making every effort not to interpret a provision in a 17 manner that renders other provisions of the same statute inconsistent, meaningless or 18 superfluous.’” *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (citation omitted). 19 i. Plain Meaning of § 1225(b)(2) 20 The dispute rests on whether § 1225(b)(2) applies to Petitioner.

Section 1225(b)(2) 21 provides, in pertinent part, “in the case of an alien who is an applicant for admission, if the 22 examining officer determines that an alien seeking admission is not clearly and beyond a 23 doubt entitled to be admitted, the alien shall be detained....” 8 U.S.C. § 1225(b)(2) 24 (emphasis added). Petitioner argues that his proceedings should be governed by § 1226(a).

25 ECF No. 1, ¶ 29. 26 27 1 The term “seeking admission” is not defined under § 1225. As many cases in this 2 District and this Circuit have found, “seeking admission” is best understood to require “an 3 affirmative act such as entering the United States or applying for status.” See *Mosqueda v. 4 Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept.

8, 2025); 5 see also *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361, at *5 6 (S.D. Cal. Oct. 24, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 7 2782499, at *1 (W.D. Wash. Sept. 30, 2025) (“Every district court to address this question 8 has concluded that the government's position belies the statutory text of the INA, canons 9 of statutory interpretation, legislative history, and longstanding agency practice.”).

Here, 10 Petitioner was not “seeking admission” within this interpretation. He was arrested in the 11 interior of the United States at a scheduled appointment with ICE, not while presenting 12 himself at the gate of entry to attempt to apply for admission. 13 ii. Government's Longstanding Practice 14 The Court’s interpretation is further supported by the enforcement agency’s past 15 interpretation of §§ 1225(b) and 1226.

Prior to enactment of the Illegal Immigration 16 Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) governing expedited and 17 regular removal proceedings, handling of asylum claims, and other activities involving the 18 apprehension, detention, hearing of claims and ultimately the removal of inadmissible and 19 deportable aliens, the term “seeking admission” was confined to aliens arriving at the port 20 of entry under the prior § 1225.

See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 21 (BIA 2025). After the IIRIRA was enacted, DHS’s predecessor agency, the U.S. 22 Immigration and Naturalization Service (“INS”), “detained arriving aliens” under § 23 1225(b), but “[n]oncitizens who were present without admission were detained under the 24 discretionary rules of 8 U.S.C. § 1226(a).” Inspection and

Expedited Removal of Aliens; 25 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 26 62 Fed.

Reg. 10312-01, 10323, 1997 WL 93131 (Mar. 6, 1997) (“Despite being applicants 27 1 for admission, aliens who are present without having been admitted or paroled (formerly 2 referred to as aliens who entered without inspection) will be eligible for bond and bond 3 redetermination.”).

In arriving at this application, the INS did not find it necessary to 4 interpret “seeking admission.” 5 This longstanding practice from 1997 through 2025 requires the Court to afford due 6 respect to Executive Branch interpretations of §§ 1225(b) and 1226(a). See *Edwards’ 7 Lessee v. Darby*, 25 U.S. 206, 210 (1827) (“In the construction of a doubtful and ambiguous 8 law, the contemporaneous construction of those who were called upon to act under the law, 9 and were appointed to carry its provisions into effect, is entitled to very great respect.”).² 10 The U.S. Supreme Court in *Loper Bright Enters. v. Raimondo* observed that “[s]uch respect 11 was thought especially warranted when an Executive Branch interpretation was issued 12 roughly contemporaneously with enactment of the statute and remained consistent over 13 time.” 603 U.S. 369, 386 (2024).

That is because “the longstanding ‘practice of the 14 government, [] can inform [a court’s] determination of ‘what the law is[.]’” *NLRB v. Noel* 15 16 17 18 2 *Hurtado* noted that respect for this longstanding practice initiated by INS in 1997 was unwarranted because the policy only applies to a “doubtful and ambiguous law” and 19 finding that the INA text is clear and not ambiguous.

Matter of Yajure Hurtado, 29 I. & N. 20 Dec. 216, 226 (BIA 2025). Yet the panel acknowledged that the issue of statutory construction of the INA is complicated by a patchwork of statutes implemented at different 21 times and intended to address different issues. *Id.* at 227.

Here, Petitioner claims that the 22 statute is plain and that its interpretation is the reasonable one. Yet interpretation of § 1225(b)(2) is complicated due to the complex set of legal provisions and the term “seeking 23 admission” is surrounded by enough ambiguity that giving weight to the “longstanding” 24 application of this interpretation is warranted.

The Court also takes into account the congressional failure to revise or repeal the agency’s interpretation. See *N.L.R.B. v. Bell 25 Aerospace Co. Div. of Textron Inc.*, 416 U.S. 267, 274-75 (1974). Congress would have 26 had the opportunity to do so when it enacted the Laken Riley Act which created the § 1226(c) mandatory detention provisions for certain criminal aliens.

27 1 *Canning*, 573 U.S. 513, 525 (2014) (first quoting *McCulloch v. Maryland*, 17 U.S. 316, 2 401 (1819); then quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). 3 On July 10, 2025, a U.S. Customs and Border Protection Memorandum was issued 4 titled “Detention of Applicants for Admission.” See [https://www.cbp.gov/document/foia- 5 record/detention-applicants-admission](https://www.cbp.gov/document/foia-5-record/detention-applicants-admission).

The Memorandum indicated that DHS, in 6 coordination with the DOJ, “revisited its legal position” on the INA and determined that § 7 1225, rather than § 1226, is the applicable immigration authority for an “applicant for 8 admission” including an alien present in the U.S. “who has not been admitted... whether 9 or not at a designated port of arrival.” Id. It stated that “it is the position of DHS that 10 applicants for admission are subject to mandatory detention under INA § 235(b) and may 11 not be released from DHS custody except by INA § 212(d)(5) parole.” Id. The 12 Memorandum further provides that for custody purposes, “these aliens are now treated in 13 the same manner that ‘arriving aliens’ have historically been treated.

The only aliens 14 eligible for a custody determination and release on recognizance, bond, or condition parole 15 under INA § 236(a) are aliens admitted to the United States and chargeable with 16 deportability under INA § 237, with the exception of those subject to mandatory detention 17 under INA § 236(c).” Id. This new legal position was provided to ICE employees in an 18 “Interim Guidance Regarding Detention Authority for Applicants for Admission.” See 19 *Bethancourt Soto v. Soto*, --F.

Supp. 3d--, 2025 WL 2976572, at *2 n.1 (D.N.J. Oct. 22, 20 2025) (quoting *Vasquez v. Feeley*, -- F. Supp. 3d--, 2025 2676082, at *5 n.2 (D. Nev. Sept. 21 17, 2025)). 22 The Memorandum does not address the “seeking admission” language that is at core 23 of the dispute, nor did it justify the changed position given the prior longstanding 24 application of the statute.

In fact, the Government has acknowledged in other recent cases 25 that prior to the issuance of the July 10, 2025 Memorandum, a non-citizen who had lived 26 here at the time of the detention would have been eligible for a bond hearing. See generally 27 1 *Zumba v. Bondi*, Civ. No. 25-cv-14626 (KSH), 2025 WL 2753496, at *4 (D.N.J. Sept. 26, 2 2025) (“Respondents readily admit that if petitioner had been arrested on the basis of her 3 inadmissibility prior to July 8, 2025, she would have been discretionarily detained under 8 4 U.S.C. § 1226(a) and eligible for a bond hearing.”).

5 Given the Government’s longstanding interpretation of §§ 1225(b) and 1226(a), the 6 Court is further persuaded that “seeking admission” applies to arriving noncitizens and not 7 those who entered without inspection and have lived in the United States for years. 8 iii. Statutory Canons of Interpretation 9 In addition, a potential new interpretation of § 1225(b)(1) “violates the rule against 10 surplusage and negates the plain meaning of the text.” *Quijada Cordoba v. Knight*, --F.

11 Supp. 3d--, 2025 WL 3228945, at *6 (D. Id. Nov. 19, 2025) (citations omitted). First, the 12 “interpretation of ‘seeking admission’ as [equivalent to “applicant for admission”] would 13 seemingly render that phrase mere surplusage, such that the language could be deleted 14 while retaining the same statutory meaning.” *Lopez v. Warden, Otay Mesa Det. Ctr.*, No. 15 25-CV-2527-RSH-SBC, 2025 WL 3005346, at *3 (S.D.

Cal. Oct. 27, 2025). This 16 interpretation runs counter to the interpretative canon that effect should be given to all 17 statutory provisions. Therefore, the more apt interpretation in alignment with the canon 18 must, instead, account for “seeking admission” as an additional requirement to those 19 identified as “applicants for admission.” 20 Second, that “new” interpretation blurs the lines between § 1225(b) and § 1226(a).

21 As made clear in Jennings, “U.S. immigration law authorizes the government to detain 22 certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also 23 authorizes the Government to detain certain aliens already in the country pending the 24 outcome of removal proceedings under §§ 1226(a) and (c).” Jennings, 583 U.S. at 289.

The 25 Supreme Court thereby interprets § 1225(b) to apply to “aliens seeking admission to the 26 country,” while § 1226(a) applies to “aliens already in the country.” Jennings, 583 U.S. at 27 1 289. Here, Petitioner is sensibly characterized as a noncitizen “already in the country” 2 rather than one “seeking admission.” Indeed, “[t]he overwhelming majority of courts to 3 address the issue have agreed that Section 1226(a), rather than the mandatory detention 4 provision of Section 1225(b)(2)(A), applies to a noncitizen in Petitioner's position who has 5 resided in the United States for many years.” Lopez, 2025 WL 3005346, at *4 (citations 6 omitted).

7 Third, § 1226 already provides an exception to its rule that the Attorney General 8 may set bond or release an alien on conditional parole, specifically under subsection (c). 9 Enacted by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), § 1226(c)(1)(E) 10 requires mandatory detention for people who are inadmissible under §§ 1182(a)(6)(A), 11 (6)(C), or (7) and charged with certain crimes.

8 U.S.C. § 1226(c)(1)(E). Beyond the fact 12 that Petitioner doesn't satisfy these requirements, a new “interpretation of Section 13 1225(b)(2)(A) would seemingly render the foregoing language from Section 1226(c) a 14 nullity.” Lopez, 2025 WL 3005346, at *4 (citations omitted). Specifically, “if § 1225(b)(2) 15 already encompassed all inadmissible noncitizens, there would be no need to pass an 16 amendment that required detention for those who are inadmissible under the same statutes 17 and are being charged with specific crimes.” *Medina-Ortiz v. Noem*, No. 25-cv-02819- 18 DMS-MMP, at *5 (S.D.

Cal Oct. 30, 2025). Such an “interpretation would render the 19 Laken Riley Act, ‘superfluous’” and, therefore, should not be accepted. *Id.* 20 In sum, the Court concludes that Petitioner is not “seeking admission” under 21 § 1225(b)(2) and that an immigration judge retains authority to grant conditions of bail 22 under §1226(a).

Accordingly, the Court finds that Petitioner is being unlawfully detained 23 under § 1225(b)(2) and is entitled to a bond hearing.³ 24 25 26 3 Having reached this conclusion on Petitioner's first claim for relief, the Court declines to decide the merits of Petitioner's due process claim. 27 1

CONCLUSION 2 Based on the reasoning above, the Court GRANTS IN PART the petition for writ 3 || of habeas corpus pursuant to 28 U.S.C. § 2241.

4 To the extent that Petitioner requests release, such a request 1s premature. Section 5 || 1226 requires only consideration of release on bond, and a bond hearing is therefore 6 ||sufficient to correct Respondents' ongoing violation of the INA as to Petitioner. See 8 7 ||U.S.C. § 1226(a). If Respondents fail to comply with this order, Petitioner may seek further 8 ||relief from the Court at that time.

9 Accordingly, the Court ORDERS Respondents to provide Petitioner with a bond 10 hearing under 8 U.S.C. § 1226(a) within seven (7) days of this Order. Respondents are 11 || ORDERED to FILE a Notice of Compliance within ten days of providing Petitioner with 12 bond hearing.

The Clerk of Court SHALL enter judgment in Petitioner's favor and close 13 || this case. 14 IT IS SO ORDERED. 15 Dated: December 30, 2025 <= 17 United States District Judge 18 19 20 21 22 23 24 || _____ 25 |4 In his prayer for relief, Petitioner requests an award of costs and reasonable attorney's 26 || fees. ECF No. 1 at 9. Petitioner's counsel may submit an appropriate EAJA fee application within 30 days of the issuance of this Order.

28 25-cv-3754-GPC-KSC