

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

KATHIA RUGAMA PEREZ,

Petitioner,

v.

MARK BOWEN, et al.,

Respondents.

Case No. 5:25-cv-03360-FMO-DFM

Report and Recommendation of
United States Magistrate Judge

This Report and Recommendation is submitted to the Honorable Fernando M. Olguin, United States District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. INTRODUCTION

On December 12, 2025, Petitioner Kathia Rugama Perez (“Petitioner”) filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. See Dkt. 1 (“Petition”). On December 16, 2025, the Court ordered Respondents to respond within fourteen (14) days. See Dkt. 4. Respondents did not file a motion for dismissal, return, or otherwise respond to the Petition. For the reasons set forth below, the Court recommends the unopposed Petition be granted in part.

II. BACKGROUND

Petitioner is a 34-year-old citizen of Nicaragua. See Petition ¶ 9. Petitioner came to the United States in May 2022, fleeing violence and death in Nicaragua. See id. ¶ 22. The Department of Homeland Security (DHS) paroled Petitioner into the United States in May 2022, releasing her on her own recognizance pending a removal proceeding. See id. ¶ 23. At an unspecified time, DHS filed a Notice to Appear in Immigration Court to commence a removal proceeding, and Petitioner filed an asylum application. See id. ¶ 24. The removal case is pending. See id.

On October 15, 2025, DHS detained Petitioner and sent her to the Adelanto ICE Processing Center, where she remains.¹ See id. ¶ 25. Petitioner filed a motion for a custody redetermination, but the immigration judge (IJ) denied, or Petitioner anticipates that the IJ will deny bond for lack of jurisdiction based on the Board of Immigration Appeals (BIA) decision in Matter of Yajure-Hurtado, 29 I & N Dec. 216 (BIA 2025). See id. ¶¶ 1, 27.

Petitioner argues that she is being detained in violation of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment. See id. ¶¶ 28-39. Petitioner argues that she is subject to detention under 8 U.S.C. § 1226, and that her continued detention thereunder in the

¹ In some places, the Petition states that Petitioner is detained at the Otay Mesa Detention Facility in San Diego, California, located in the Southern District of California. See, e.g. Petition ¶ 5 (“Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility, in San Diego, California, which is within the jurisdiction of this District.”). Per ICE’s Online Detainee Locator System, Petitioner remains detained at the Adelanto Facility. See <https://locator.ice.gov/odls/#/search> (search First Name: “Kathia,” Last Name: “Rugama Perez,” Country of Birth: “Nicaragua”) (last accessed January 8, 2026).

absence of a bond hearing and decision on the merits is unlawful. See id. ¶¶ 14, 30. Petitioner appears to anticipate that Respondents will argue that Petitioner is subject to mandatory detention pending removal proceedings under 8 U.S.C. § 1225(b)(2) per Yajure-Hurtado. See id. ¶¶ 14, 19.

Petitioner seeks, inter alia, a writ of habeas corpus ordering Respondents to immediately release her or schedule a bond hearing on the merits before an IJ. See id. at 7-8.

III. DISCUSSION

The core issue appears to be whether Petitioner's detention is mandatory under 8 U.S.C. § 1225(b)(2) or discretionary under 8 U.S.C. § 1226(a). The key difference between the two is that § 1226(a) provides the discretion to release detainees on bail or conditional parole, while § 1225(b)(2) mandates detention throughout the completion of removal proceedings, so long as the noncitizen—"who is an applicant for admission" and "seeking admission"—is not deemed "clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A); see also Jennings v. Rodriguez, 583 U.S. 281, 302 (2018) ("In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings."). Petitioner contends that she is subject to detention under § 1226(a). Petition ¶¶ 14, 30. As noted above, Respondents did not respond.

Based on the information in the Petition, the Court agrees with Petitioner. Petitioner was paroled into the United States in 2022, released on her own recognizance pending a removal proceeding, and detained in October 2025. See id. ¶¶ 23, 25. While Petitioner has not explicitly alleged that she was detained in 2025 while still present within the United States, this may be inferred from (i) Petitioner's contention that she is detained under § 1226(a); (ii) Petitioner's citation to caselaw reflecting her understanding that "seeking admission" for purposes of detention under § 1225(b)(2) "does not apply to individuals who, like [Petitioner], have been residing in the United States and

did not apply for admission or a change of status;" and (iii) Respondents' failure to respond. See id., ¶¶ 14, 21, 29-30.

As Petitioner notes, substantial ink has been spilled on the question of § 1225(b)(2) versus § 1226(a) detention in recent months. See id., ¶ 21 (citing Esquivel-Pina v. LaRose, No. 25-cv-2672, 2025 WL 2998361, at *8 (S.D. Cal. Oct. 24, 2025) (collecting cases)). "The vast majority of courts confronting this precise issue have rejected [the Government's] interpretation, and the BIA's interpretation in Hurtado, as contradictory to the plain text of § 1225." Amaya v. Bondi, No. 25-16428, 2025 WL 3033880, at *2 (D.N.J. Oct. 30, 2025) (collecting cases). This Court agrees with this "overwhelming majority." Salgado v. Mattos, No. 25-01872, 2025 WL 3205356, at *2 (D. Nev. Nov. 17, 2025).

In Jennings, the Supreme Court stated that § 1225(b) "applies primarily to aliens seeking entry into the United States" whereas § 1226 "applies to aliens already present in the United States." 583 U.S. at 288-89, 297, 303. Because Petitioner is a noncitizen "already present in the United States," her detention is proper under § 1226, not § 1225. See id. Considering the Supreme Court's prior distinction, the Court finds it unnecessary to engage in an extended independent reading of the provisions at issue. See Yarleque v. Noem, No. 25-02836, 2025 WL 3043936, at *8 (C.D. Cal. Oct. 31, 2025) ("Given that this Court is bound by the Supreme Court decision in Jennings, the Court need go no further and need not independently determine whether this distinction is a proper reading of the statute.").

As indicated above, this Court's recommendation is in accord with numerous decisions of other courts who have analyzed the statutes at issue, discussed longstanding agency practice, found the BIA's new reading to be erroneous, and granted similar habeas petitions. See, e.g., Demirel v. Fed. Det. Ctr. Phila., No. 25-5488, 2025 WL 3218243, at *4 (E.D. Penn. Nov. 18, 2025)

("Once again, of the 288 district court decisions to address the issue, 282 have determined that § 1226(a) applies or likely applies in situations similar to those presented here.").

In sum, Petitioner is entitled to the procedural protections that § 1226(a) provides, including a bond hearing under 8 U.S.C. § 1226(a). See, e.g., id. at *5 ("I will order [Respondent] to afford [Petitioner] the procedural protections that § 1226(a) provides: a bond hearing before an IJ and an appeal to the BIA should the IJ deny bond."); Hernandez-Luna v. Noem, No. 25-1818, 2025 WL 3102039, at *4-5 (D. Nev. Nov. 6, 2025); see also Diaz v. Garland, 53 F.4th 1189, 1202 (9th Cir. 2022) ("Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions.").

Considering the recommendation to grant habeas relief on Petitioner's INA contentions, the Court finds it unnecessary to engage in an extended analysis of Petitioner's remaining claims. See Demirel, 2025 WL3218243, at *5 (declining to address APA and due process contentions). The Court's conclusion that § 1226(a) grants Petitioner the right to a bond hearing "is sufficient to remedy a Constitutional violation." Rodriguez v. Arnott, No. 25-00836, 2025 WL 3218553, at *4 (W.D. Mo. Nov. 18, 2025).

IV. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Judge issue an Order: (1) accepting this Report and Recommendation; (2) granting, in part, the Petition; and (3) issuing a writ ordering—(a) Respondents to arrange for an individualized bond hearing before an immigration judge under 8 U.S.C. § 1226(a) within five (5) days of the issuance of the writ, with instructions that the immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond and (b) the parties to file a status report within ten (10) days of the issuance of the writ detailing if and when the bond hearing occurred, if bond was granted or denied, and if bond was denied, the reasons for denial.

Date: January 14, 2026


DOUGLAS F. McCORMICK
United States Magistrate Judge