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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELDIZAR AGUILAR-MARTIN,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-3130-RBM-DDL

Traverse in support of Petition for a Writ of Habeas Corpus

INTRODUCTION

In his second amended petition, Mr. Aguilar-Martin explained that he has been living in the United States for over 25 years and is thus detained pursuant to 8 U.S.C. § 1226, rather than § 1225(b). ECF No. 9 at 2–7. And because Respondents provide no proof that he was arrested pursuant to an administrative or judicial warrant, the remedy for this violation is immediate release, rather than a bond hearing. ECF No. 9 at 8–9.

But Respondents disagree, claiming that: 1) this Court lacks jurisdiction under 8 U.S.C. § 1252(g); 2) Mr. Aguilar-Martin's conviction under California Penal Code § 273.5 is a crime involving moral turpitude (CIMT) that renders him subject to mandatory detention under 8 U.S.C. § 1226(c); and 3) his detention has not become unconstitutionally prolonged. ECF No. 10 at 3–6.

Respondents' first argument fails under Ninth Circuit precedent. *See Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025) (holding that § 1252(g) does not prohibit challenges to detention "merely because they are in some fashion connected to removal orders"). Respondents' third argument is irrelevant because Mr. Aguilar-Martin has never raised a prolonged detention argument. *See* ECF No. 9. And Respondents' second argument is incorrect because the Ninth Circuit squarely holds that § 273.5 is not a CIMT. Because Respondents have also waived any argument regarding the correct remedy for a warrantless arrest, this Court should order his immediate release.

LEGAL ANALYSIS

Because this Court has jurisdiction to consider detention-related arguments, and because Mr. Aguilar-Martin does not raise a prolonged detention argument, the Court need not consider Respondents' first and third arguments. *See* ECF No. 10 at 3–4, 5–6. Thus, the only relevant argument is whether Mr. Aguilar-Martin is subject to mandatory detention under § 1226(c). The answer is no.

I. Because binding Ninth Circuit precedent holds that Cal. Penal Code § 273.5 is not a CIMT, Mr. Aguilar-Martin is not subject to mandatory detention under 8 U.S.C. § 1226(c).

In their Return, Respondents' only relevant argument is that Mr. Aguilar-Martin's conviction for domestic violence under Cal. Penal Code § 273.5 is "a CIMT" that "makes him inadmissible under 8 U.S.C. § 1182(a)(2)" and "subject to mandatory detention" under § 1226(c). ECF No. 10 at 4. But Respondents merely assert—with no supporting authority—that § 273.5 is a CIMT. Under binding Ninth Circuit precedent, it is not.

In *Morales-Garcia v. Holder*, 567 F.3d 1058, 1060 (9th Cir. 2009), the Ninth Circuit squarely held that "§ 273.5(a) is not categorically a CIMT." The court explained that its past decisions "make clear that assault and battery, without more, do not qualify as CIMTs" absent an aggravating factor, such as an act committed against "a person whom society views as deserving special protection." *Id.* at 1065. But the Ninth Circuit noted that the statutory language of § 273.5(a) includes acts committed against a "former cohabitant," and that not all former cohabitants "are committed to, trust, or depend upon, each other." *Id.* at 1066. Thus, the statute includes victims who are not "particularly vulnerable, nor are they entitled to care and protection by the perpetrator." *Id.* (quotations and alterations omitted). Because some relationships covered by the statute are thus "more akin to strangers or acquaintances," which "does not necessarily trigger a crime of moral turpitude," the Ninth Circuit held that "this aggravating factor cannot, alone, transform § 273.5(a) into a crime categorically involving moral turpitude." *Id.* (quotations, citation, and alterations omitted).[1]

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[1] Nor is the statute divisible between former cohabitants and other individuals covered by the statute since California case law does not require a jury to agree on the identity of the victim. *See Mathis v. United States,* 579 U.S. 500, 519 (2016) (requiring that state case law satisfy "*Taylor*'s demand for certainty"); *People v. Vaca*, No. E057074, 2014 WL 118099, at *1 (Cal. Ct. App. Jan. 14, 2014);

Under *Morales-Garcia*, then, § 273.5 is not a CIMT that "makes [Mr. Aguilar-Martin] inadmissible under 8 U.S.C. § 1182(a)(2)" and thus "subject to mandatory detention," as Respondents claim. ECF No. 10 at 4. Accordingly, Respondents are also incorrect that Mr. Aguilar-Martin does not fall within the *Maldonado Bautista* class, since he is not detained under § 1226(c). ECF No. 10 at 6. Thus, Mr. Aguilar-Martin is detained under § 1226(a).

II. Respondents have waived any argument that immediate release is the proper remedy due to the absence of a warrant.

Although Mr. Aguilar-Martin is eligible for a bond hearing as a *Maldonado Bautista* class member, he also argued in his second amended petition that because he was improperly detained without an administrative warrant as required by § 1226, this Court should order his immediate release. ECF No. 9 at 8–9. The government ignores this argument and has thus waived it. *See* ECF 10.

As Mr. Aguilar-Martin showed, a recent decision in this district determined "a noncitizen may only be arrested and detained pending a decision on removal '[o]n a warrant issued by the Attorney General.'" *Cruz Pedraza v. Larose*, No. 26-cv-2697-LL-MSB, ECF 12 at 1 (S.D. Cal. May 27, 2026) (quoting 8 U.S.C. § 1226(a)). This decision further determined that when the government violates this requirement, "a petitioner's immediate release is justified." *Id.* (quotations and alterations omitted). Other courts have reached the same conclusion. *See Eslid. B.G. v. Bondi*, No. 26-cv-5020-RAL, 2026 WL 734992, *6 (D.S.D. Mar. 16, 2026) (collecting cases); *see also JAACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *Diaz v. Albarran*, No. 25-cv-9837-JSC, 2025 WL 3214972 (N.D. Cal. Nov. 18, 2025); *R.D. v. Bondi*, No. 26-cv-1904-ECT-EMB, 2026 WL 788263, *2 (D. Minn. Mar. 20, 2026) (collecting cases ordering immediate release in the absence of a warrant).

People v. Leach, No. C075284, 2015 WL 3896816, at *1 (Cal. Ct. App. Jun. 25, 2015).

The government completely ignores this argument. *See* ECF 10. Because Respondents do not address Mr. Aguilar-Martin's argument that he was detained without a statutorily required warrant, they have waived—or at least forfeited—their opportunity to contest the due process violations or argue against immediate release. *See United States v. Castillo-Marin*, 684 F.3d 914, 919 (9th Cir. 2012) (determining that the government concedes an argument that "was available at the time it filed its answering brief") (citing *United States v. McEnry*, 659 F.3d 893, 902 (9th Cir. 2011)). Accordingly, this Court should order Mr. Aguilar-Martin's immediate release.

CONCLUSION

Because Mr. Aguilar-Martin is not subject to mandatory detention under § 1226(c), and because he was arrested without a warrant in violation of the statute, this Court should GRANT the habeas petition and order his immediate release.

Respectfully submitted,

Dated: June 9, 2026

s/ Kara Hartzler

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