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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GERMAN REYES GARIBAY,

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 of Otay Mesa Detention Center,

Respondents.

Case No.: 26-cv-3786-JO-AHG

Amended Petition for a Writ of Habeas Corpus

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I. Introduction

Respondents have improperly detained German Reyes Garibay since June 27, 2026. That is when ICE agents followed his car for two blocks, pulled him over, said his name, and then arrested him without a warrant.

Because he entered without inspection, Mr. Garibay can be detained only under 8 U.S.C. § 1226. And because Respondents have apparently not "complied with the express terms of section 1226 when [they] detained" Mr. Garibay, through the "[i]ssuance of a[n administrative] warrant," this Court should order his "immediate release." *JAACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *accord 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 issued under 8 U.S.C. § 1226(a) in similar cases).

"The language of § 1226(a)'s warrant requirement is unequivocal and does not afford the Government forgiveness simply by providing a bond hearing after the fact." *Jesus Emery M.F. v. Warden*, No. 26-cv-1374-TLN-CKD, 2026 WL 849762, *2 (E.D. Cal. Mar. 27, 2026). Judge Lopez is the latest judge to join that chorus in holding that "[w]hen the government does 'not comply with the plain language of section 1226(a), [a petitioner's] immediate release is justified.'" *Pedraza v. Larose*, No. 26V2697-LL-MSB, 2026 WL 1484326, at *2 (S.D. Cal. May 27, 2026) (quoting *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025)).

This situation appears to arise from a sudden change in the way that the Board of Immigration Appeals interprets 8 U.S.C. §§ 1225 and 1226. "For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry."

Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025). But in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals ("BIA") accepted the government's new position that inadmissible immigrants are not eligible for bond under § 1226(a), even if they have been living in the United States for years or decades. Instead, the BIA held that all inadmissible immigrants are subject to the mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A).

Because Mr. Garibay can only be detained under § 1226 and, under that provision's plain text, with a warrant, this Court should order his immediate release.

II. Statement of Facts

Mr. Garibay was born in Mexico and first entered the United States in 2018 without inspection. Exhibit A, Declaration of German Reyes Garibay, at ¶ 1. He has lived in San Diego since he arrived in the U.S. *Id.* at ¶ 1.

On June 27, 2026, Mr. Garibay was driving to work in his landscaping truck when ICE agents started following him. *Id.* at ¶ 2. They followed him for two blocks and then pulled him over. *Id.* at ¶ 2.

The ICE agents didn't ask Mr. Garibay anything. *Id.* at ¶ 3. They just said his name and then told him to get in their vehicle. *Id.* at ¶ 3. They never showed him a warrant or explained why they were detaining him. *Id.* at ¶ 3. Since then, Mr. Garibay has been detained at Otay Mesa Detention Center without a bond hearing.

III. Legal argument

A. Noncitizens who enter without inspection are entitled to the process outlined in 8 U.S.C. § 1226(a).

1. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter without inspection of the right to seek bond.

As mentioned above, this habeas petition turns, at least in part, on the BIA's recent decision in *Yajure Hurtado*. The issue in *Yajure Hurtado* revolves

around two statutes, 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2)(A).

"Section 1226(a) provides for the arrest and detention of noncitizens 'pending a decision on whether the alien is to be removed from the United States.'" *Hernandez Nieves*, 2025 WL 2533110, at *3. It instructs that, "*[o]n a warrant issued by the Attorney General*, an alien may be arrested and detained." 8 U.S.C. § 1226(a) (emphasis added). Then, the Attorney General "may continue to detain" arrestees or "may release [them] on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." *Id.* (punctuation latered).

The problem for Respondents is that "[f]ederal regulations" implementing this statute "provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. § 1236.1(d)(1)). Generally speaking, Respondents would prefer not to provide such bond hearings.

But § 1225(b)(2)(A), by contrast, provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for" certain immigration proceedings. 8 U.S.C. § 1225(b)(2)(A). Meanwhile, federal regulations do not require bond hearings for people detained under that section. Instead, "DHS has the sole discretion to temporarily release on parole 'any alien applying for admission to the United States' on a 'case-by-case basis for urgent humanitarian reasons or significant public benefit.'" *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)). Section 1225's text also does not require that the government obtain a warrant before detaining a noncitizen. Respondents appear to prefer this lack of process.

The catch is that by their terms, these statutes apply to different groups of immigrants. "Section 1226(a) sets out the default rule," which governs unless

some other, more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an "applicant for admission" who is also an "alien seeking admission." 8 U.S.C. § 1225(b)(2)(A).

In *Yajure Hurtado*, the BIA considered which of these provisions—the default rule in § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to immigrants who, like Mr. Garibay, enter the United States without inspection but live for years in the country's interior. 29 I.&N. Dec. at 216. The BIA concluded that noncitizens who enter without inspection have no right to seek bond from an IJ, regardless of how long they have been residing in the country and irrespective of whether they were apprehended by immigration authorities. *Id.* at 228. In other words, they are detained under § 1225 and—as far as Respondents are concerned—neither a bond hearing nor a warrant are required for detention. Problem solved.

2. Courts disagree with the BIA's reasoning.

Since *Yajure Hurtado* was decided, many immigrants who otherwise would have received bond hearings under § 1226(a) have challenged that decision in the federal courts. Courts broadly agree—in this district and others—that the BIA's novel constructions of § 1225(b)(2)(A) and § 1226(a) are incorrect.

That is because "[§] 1225(b) applies to noncitizens arriving at the border or w*ho very recently entered the United States*." *Pedraza*, 2026 WL 1484326, at *2 (citing *Beltran v. Noem*, No. 25CV2650-LL-DEB, 2025 WL 3078837, at *4–7 (S.D. Cal. Nov. 4, 2025)). They take their cues not just from the statutory text and structure, but also the Supreme Court's explanation that "As the Supreme Court explained, "the government may 'detain certain [noncitizens] seeking admission into the country under §§ 1225(b)(1) and (b)(2),' while § 1226(a) allows the government to 'detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings.'" *Id.* (alterations in original) (quoting *Jennings*

v. Rodriguez, 583 U.S. 281, 289 (2018)).

Thus, the best reading of 8 U.S.C. §§ 1225 and 1226 shows that Mr. Garibay is not subject to detention under § 1225 and can instead only fall within § 1226. And under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court must independently interpret the meaning and scope of §§ 1225(b), § 1226(a) using the traditional tools of statutory construction. 603 U.S. 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA's decision in *Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225 and 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, this Court should give it no weight. If anything, the government's "decades of practice" providing bond hearings to those who entered without inspection is a more persuasive guide. *Martinez*, 2025 WL 2084238, at *4.

That means two things. First, Mr. Garibay is owed a bond hearing. Second, Respondents can detain him only if they have a warrant.

B. The proper remedy for a warrantless arrest is immediate release and an order that Petitioner cannot be re-detained absent the procedures of § 1226(a).

Under section 1226's plain text, "the '[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a).'" *Pedraza*, 2026 WL 1484326, at *2 (quoting *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025)); *accord Chogllo Chafla*, 804 F. Supp. 3d at 264. The statute provides that, *"[o]n a warrant issued by the Attorney General*, an alien may be arrested and detained." 8 U.S.C. § 1226(a) (emphasis added). "[I]t follows that absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a)." *Chogllo Chafla*, 804 F. Supp. 3d at 264 (emphasis in original).

Here, Mr. Garibay has never been shown a warrant, and it appears he was arrested without one. Ex. A ¶ 3. As a result, as courts have concluded for petitioners in Mr. Garibay's circumstances, his "arrest and detention are therefore unauthorized, and the appropriate remedy for detention that lacks a proper statutory basis under § 1226(a) is release." *Eslid. B.G. v. Bondi*, No. 26-cv-5020-RAL, 2026 WL 734992, *6 (D.S.D. Mar. 16, 2026) (collecting cases ordering release absent an administrative warrant under § 1226(a)); *see also* Pedraza, 2026 WL 1484326, at *2; *J.A.C.P.*, 2025 WL 3013328, *8 (same); *Juan R. v. Bondi*, No. 26-cv-252-SRN-DTS, 2026 WL 125255 (D. Minn. Jan. 16, 2025) (same); *See also Urias v. Semaia,* No. 5:26-CV-02753-DTB, 2026 WL 1710375, at *6 (C.D. Cal. June 10, 2026) (same); *Galvez Pantoja v. DHS,* No. 5:26-CV-02084-JDE, 2026 WL 1601897, at *4 (C.D. Cal. June 1, 2026) (same); *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026) (same); *Lopez-Sanchez v. Blanche,* No. 8:26CV264, 2026 WL 1759557, at *3 (D. Neb. June 18, 2026) (same); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-cv-00479-SDN, 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025) (same); *J.A.C.P. v. Wofford*, No. 1:25-cv-01354-KES-SKO (HC), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (same).

That is because "[h]abeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release." *Pedraza*, 2026 WL 1484326, at *2 (*Munaf v. Geren*, 553 U.S. 674, 693 (2008)). Furthermore, "[t]he language of § 1226(a)'s warrant requirement is unequivocal and does not afford the Government forgiveness simply by providing a bond hearing after the fact." *Jesus Emery M.F. v. Warden*, No. 26-cv-1374-TLN-CKD, 2026 WL 849762, *2 (E.D. Cal. Mar. 27, 2026).

This is particularly the case because the statute and regulations implement the due process protection that attends any civil detention. The Supreme Court has "repeatedly recognized that civil commitment for any purpose constitutes a

significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also United States v. Salerno,* 481 U.S. 739, 755 (1987); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

Here, Petitioner was apparently arrested without a warrant. That violated the statute, regulations, and due process. This Court should therefore grant the petition and order his release.

IV. Prayer for Relief

For the above reasons, this Court should order that:

1. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and is instead subject to detention, if at all, pursuant to the discretionary provisions of 8 U.S.C. § 1226 and a warrant is required for his detention;
2. Respondents shall immediately release Petitioner from custody;
3. Respondents shall return to Petitioner any personal property; and
4. If Respondents seek to re-detain Petitioner, they shall obtain a warrant and hold a pre-deprivation bond hearing before a neutral arbiter pursuant to section 1226(a) and its implementing regulations, at which Respondents shall demonstrate the issuance of a warrant and at which petitioner's eligibility for bond must be considered, *see, e.g.*, *JAACP*, 2025 WL 3013328 at *8; and
5. Any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 8, 2026

s/ Kara Hartzler

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