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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 at Otay Mesa Detention Detention,

Respondents.

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

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

On June 27, 2026, ICE officers followed Mr. Garibay's vehicle, pulled him over, smashed his car window, and arrested him without a warrant. ECF No. 7-1 at 6; ECF 6, Exh. A.[1] Because Mr. Garibay has been in the United States for at least five years and is detained subject to 8 U.S.C. § 1226(a), he argued that this warrantless arrest violated the Immigration and Nationality Act and asked this Court to order his immediate release.

In their Response, Respondents state that "the government does not oppose the petition and defers to the Court on the appropriate relief." ECF No. 7 at 3. However, they state that "[t]o the extent Petitioner requests immediate release because of a lack of an administrative warrant, Respondents respectfully oppose." *Id.* They oppose because: 1) "Petitioner was issued an administrative warrant on June 27, 2026," and 2) "8 U.S.C. § 1357(a)(2) authorizes warrantless arrests and 8 C.F.R. § 287.3(d) provides the government 48 hours to issue a warrant if it determines that the noncitizen will remain custody." *Id.*

Neither reason is persuasive. First, nothing in the administrative warrant or the I-213 Record of Deportable/Inadmissible Alien shows that the warrant was issued *before* Mr. Garibay's arrest—in fact, everything suggests it was issued *after* his arrest while he was being processed in ICE custody. Second, the Immigration and Nationality Act does not authorize arrests prior to the issuance of a warrant (apart from certain narrow circumstances that do not apply here), and the regulation Respondents rely on is ultra vires to the statute. Accordingly, this Court should order Mr. Garibay's immediate release.

[1] Because Mr. Garibay's original declaration inadvertently contained the name of a different person, he files an amended declaration with this traverse.

ARGUMENT

I. Respondents have not shown that they issued Mr. Garibay's warrant *before* his arrest.

While Respondents state that "Petitioner was issued an administrative warrant on June 27, 2026," they never claim that this warrant was issued *before* Mr. Garibay's arrest. ECF 7 at 2. In fact, several details affirmatively suggest that the warrant was issued *after* agents took Mr. Garibay into custody.

First, agents never showed Mr. Garibay a warrant at the time of his arrest. According to Respondents' I-213, an ICE officer "ordered REYES GARIBAY to turn off the vehicle and exit to which he refused." ECF No. 7-1 at 6. The agents then issued "[s]everal more orders" to exit the vehicle "to which he continued to refuse." *Id.* Agents then smashed the window of Mr. Garibay's vehicle and "gained access to the vehicle via the front passenger window." *Id.* Had agents shown Mr. Garibay a warrant, the I-213 would have presumably said so. Indeed, had agents shown Mr. Garibay a warrant, it is more likely he would have complied with their orders, making it unnecessary for them to smash in his car window.

Second, the certificate of service states that the warrant was served on Mr. Garibay and "the contents of this notice were read to him or her in the Spanish language." ECF No. 7-1 at 2. But again, nothing in the I-213 report reflects that agents read this warrant to Mr. Garibay *prior to* his arrest. So it is more likely that agents arrested Mr. Garibay and transported him to an ICE processing center, *after which* they issued the warrant, served it on him, and read him the contents.

Third, the warrant purports to make a determination of probable cause for Mr. Garibay's arrest based on two checked boxes that state:

- "biometric confirmation of the subject's identity and a records check of federal databases…"

- "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmative indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law."

ECF 7-1 at 2. But Respondents never conducted a "biometric confirmation of [Mr. Garibay's] identity" before smashing in his car window and arresting him. And Mr. Garibay's declaration disputes the I-213's claim that he admitted he did not have "legal status in the United States"—rather, he states that the officers merely "said my name and then told me to get in their vehicle." Exh. A at ¶ 3. Thus, any "biometric confirmation" or "statements made voluntarily" likely occurred during Mr. Garibay's processing, rather than before his arrest.

In other words, everything about the warrant Respondents have produced suggests that immigration agents pulled Mr. Garibay over, smashed in his car window, brought him to the federal building in downtown San Diego, and only then created, signed, and served the warrant. This rendered Mr. Garibay's arrest illegal. As one court has explained, "[t]he Supreme Court's explanation of the process for a warrant-based apprehension and detention under S 1226(a) confirms that the warrant must be issued *before* the alien is arrested and taken into custody." *Ramos v. Lyons*, 809 F. Supp. 3d 1015, 1023 (C.D. Cal. Nov. 12, 2025)

II. The Immigration and Nationality Act does not authorize warrantless arrests apart from narrow circumstances that do not apply here.

Respondents' failure to show that they issued Mr. Garibay's warrant before his arrest matters because the Immigration and Nationality Act does not authorize warrantless arrests apart from narrow circumstances that do not apply here.

The statutory authority of ICE officers to arrest non-citizens suspected of violating immigration laws may only be executed in certain circumstances. First, "[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)." *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025). Specifically, § 1226 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). Such a warrant "must be issued *before* the alien is arrested and taken into custody." *Ramos v. Lyons*, 809 F. Supp. 3d 1015, 1023 (C.D. Cal. Nov. 12, 2025). "[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).

Additionally, 8 U.S.C. § 1357 specifies the narrow circumstances in which a noncitizen may be arrested without a warrant. "If no federal warrant has been issued, [] officers have more limited authority." *Arizona v. U.S.*, 567 U.S. 387, 408 (2012). That limited authority includes the ability to arrest a noncitizen "who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation" or when the officer has "reason to believe" the individual "is in the United States in violation of [immigration laws] *and* is likely to escape before a warrant can be obtained for his arrest . . ." 8 U.S.C. § 1357(a)(2) (emphasis added). "The 'reason to believe' language in § 1357(a)(2) is the equivalent of the constitutional requirement of probable cause." *Ramirez Ovando v. Noem*, 810 F. Supp. 3d 1209, 1216 (D. Colo. 2025).

While Respondents claim that "8 U.S.C. § 1357(a)(2) authorizes warrantless arrests," they never explain how Mr. Garibay fits within the narrow circumstances of § 1357(a)(2). Mr. Garibay was not "entering or attempting to enter the United States" in the "presence or view" of the agents at the time of his arrest. 8 U.S.C. § 1357(a)(2). Nor have Respondents ever claimed that Mr. Garibay was "likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). Given that agents located Mr. Garibay once, there is no indication that he was likely to flee or could not be located again. Indeed, agents could have obtained Mr. Garibay's address and issued him a Notice to Appear for removal proceedings *without* detaining him. Thus, Respondents have never shown that the narrow exceptions in § 1357(a)(2) justified his warrantless arrest.

Respondents also argue that Mr. Garibay could be arrested without a warrant because the regulation at 8 C.F.R. § 287.3(d) "provides the government 48 hours to issue a warrant if it determines that the noncitizen will remain custody." ECF No. 7 at 3. On its face, § 287.3(d) states that "a determination will be made *within 48 hours of the arrest* . . . whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued." 8 C.F.R. § 287.3(d). But this regulation directly contradicts at least two statutory provisions in the Immigration and Nationality Act.

First, the regulation contradicts the plain language of § 1226, which states: "[o]*n a warrant* issued by the Attorney General, an alien may be arrested and detained.") (emphasis added). If a determination could be made "within 48 hours of the arrest" as to whether to issue a warrant, as the regulation allows, it would nullify the statute's plain language stating that the arrest occur "[o]n a warrant." 8 U.S.C. § 1226(a).

Second, as explained above, § 1357 provides specific, narrow circumstances in which a warrantless arrest is appropriate. *See* 8 U.S.C. § 1357(a)(2) (permitting an officer to arrest someone "who in his presence or view is entering or attempting to enter the United States" or is "likely to escape before a warrant can be obtained for his arrest"). If the agency could issue a post-arrest warrant in *every* case—regardless of whether one of these exceptions applied—it would obviate the need for the exceptions altogether. Doing so would allow Respondents to ignore the statute and "cure an unlawful detention by obtaining [an] untimely warrant." *Quezada-Estrada*, 2026 WL 1361880 at *5.

"Agency actions beyond delegated authority are 'ultra vires,' and courts must invalidate them." *Jacinto v. Trump*, 796 F. Supp. 3d 584, 592 (D. Neb. 2025) (quoting *United States ex. rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F. 3d 1252, 1257 (8th Cir. 1998)); *see also Romero v. INS*, 39 F. 3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the

statutory scheme is invalid). Here, the protections of § 1226 or § 1357 would be rendered meaningless if Respondents were allowed to detain non-citizens for 48 hours to secure an arrest warrant. Because the plain language of both statutes covers situations for arrests with and without warrants, applying the 48-hour provision of the regulation would render those statutes meaningless.

Since § 287.3 is ultra vires to the plain language in both § 1226 and § 1357, Mr. Garibay's warrantless arrest was unlawful, and the appropriate remedy is immediate release. As other courts have held, "[h]abeas is at its core a remedy for unlawful executive detention," and the "typical remedy for such detention is, of course, release." *Cruz-Pedraza v. LaRose*, 26-cv-2697-LL-MSB, 2026 WL 1484326, at *2 (S.D. Cal. May 27, 2026) (citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). "Respondents may not detain first, and justify later[,]" *Quezada-Estrada v. Lyons*, No. 26-cv-1599-NYW, 2026 WL 1361880, *5 (D. Colo. May 2026), and to order anything less than release would do just that. 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). Thus, courts are increasingly concluding that the tactic Respondents employed to arrest Mr. Garibay are unlawful and must be remedied by immediate release.[2]

[2] *See also 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)); *Juan R. v. Bondi*, No. 26-cv-252-SRN-DTS, 2026 WL 125255 (D. Minn. Jan. 16, 2025) (same); *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).

CONCLUSION

For these reasons, the Court should order Mr. Garibay's immediate release.[3]

Respectfully submitted,

Dated: July 23, 2026

s/ Kara Hartzler
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[3] Should this Court disagree with Mr. Garibay's request for immediate release, Respondents have conceded that Mr. Garibay is eligible for a bond hearing, ECF No. 7 at 1–3, and this Court could grant that remedy as a minimum.