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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE ESCOBAR-DOMINGUEZ,

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, JEREMY CASEY, Warden at Imperial Regional Detention Facility,

Respondents.

Case No.: 26-cv-3905-JLS-JLB

Amended Petition for a Writ of Habeas Corpus

INTRODUCTION

Jose Escobar-Dominguez was born in El Salvador and came to the United States by himself in 2007, when he was 16 years old. He has been a farmworker ever since and has never been deported or left the U.S. He has two U.S. citizen children, one of whom has serious medical problems and is a special needs child.

But on April 7, 2026, while Mr. Escobar-Dominguez was driving to work the fields in Yuma, Arizona, an unmarked ICE vehicle pulled him over and arrested him. He was placed in removal proceedings and has been detained without a bond hearing ever since.

Because Mr. Escobar-Dominguez is detained under 8 U.S.C. § 1226(a), and Respondents did not "compl[y] with the express terms of section 1226 when [they] detained" him without the "[i]ssuance of a[n administrative] warrant," this Court must order his "immediate release." *JACP v. Wofford*, No. 25-cv-1354-KES-SKO, 2025 WL 3013328, *8 (E.D. Cal. Oct. 27, 2025); *accord 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). Although 8 C.F.R. § 287.3 purports to allow Respondents to issue a warrant post-arrest, that regulation violates the plain language of both 8 U.S.C. § 1226 and 8 U.S.C. § 1357. Respondents should not be afforded an opportunity to cure their unlawful warrantless arrest; instead, this Court should order Mr. Escobar-Dominguez's "immediate release." *JACP*, 2025 WL 3013328, at *8. At a minimum, however, Mr. Escobar-Dominguez is not subject to mandatory detention under 8 U.S.C. § 1225 and should be granted a bond hearing.

STATEMENT OF FACTS

Jose Escobar-Dominguez was born in El Salvador. Declaration of Jose Samuel Escobar-Dominguez, Exhibit A at ¶ 1. When he was 16, he came to the United States by myself and entered without inspection. *Id.* at ¶ 1, 2.

For the last 19 years, Mr. Escobar-Dominguez has been an agricultural worker in California. *Id.* at ¶ 2. During this time, he has never been deported or left the United States. *Id.* at ¶ 2. He has two U.S. citizen children who are 15 and 10 years old. *Id.* at ¶ 3. His 15-year-old son has serious medical problems and is a special needs child. *Id.* at ¶ 3.

On April 7, 2026, Mr. Escobar-Dominguez was driving to Yuma, Arizona, to work in the fields there. *Id.* at ¶ 4. He was not speeding or otherwise breaking any traffic laws. *Id.* at ¶ 4. However, an unmarked vehicle turned its lights on and pulled him over. *Id.* at ¶ 4. An ICE agent asked him some questions and then arrested him. *Id.* at ¶ 4.

ICE took Mr. Escobar-Dominguez to Imperial Regional Detention Center, where he has remained ever since. *Id.* at ¶ 5. They placed him in removal proceedings, where he has been applying for relief in the form of cancellation of removal. *Id.* at ¶ 5. In the three months since he was detained, he has not received a bond hearing. *Id.* at ¶ 5.

LEGAL BACKGROUND

I. Because Mr. Escobar-Dominguez is subject to § 1226(a), he cannot be arrested without a warrant or mandatorily detained.

Both claims in this habeas petition turn on whether Mr. Escobar-Dominguez is detained under 8 U.S.C. § 1226 or 8 U.S.C. § 1225. In *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA held that the inspection, detention, and removal of *all* noncitizens who have not been admitted to the United States is governed by 8 U.S.C. § 1225. But courts in this district have widely rejected *Yahure Hurtado*, holding that individuals who entered without inspection and are arrested months or years later are subject to detention under § 1226.[1] Because Mr. Escobar-Dominguez entered the United States without

[1] *See, e.g.*, *Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24,

inspection over 22 years ago, § 1226(a) thus governs his detention.

But the Immigration and Nationality Act contains two critical statutory limitations on Respondents' authority to arrest and detain under § 1226(a). First, Respondents may not arrest someone without first issuing an administrative warrant. Second, Mr. Escobar-Dominguez is not subject to mandatory detention. Here, Respondents have violated both limitations.

A. The plain language of two statutes in the INA contradicts an agency regulation permitting post-arrest issuance of a warrant.

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

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2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025).

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).

But the implementing regulation for these statutes is 8 C.F.R. § 287.3, which goes far beyond the statutes to create an expansive authority to arrest noncitizens *without* a warrant. Under this regulation, "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) (emphasis added). This contradicts the language of the Immigration and Nationality Act in two ways.

First, the language of the regulation contradicts § 1226 by granting 48 hours from the time of arrest to obtain an arrest warrant. The plain language of § 1226 makes clear that, for an officer to detain a noncitizen under § 1226, they must obtain an arrest warrant *before* that arrest. *See* 8 U.S.C. § 1226(a) (*"On a warrant issued by the Attorney General*, an alien may be arrested and detained.") (emphasis added). So if a determination could be made "within 48 hours of the arrest" as to whether to issue a warrant, it would nullify the statute's plain language stating that the arrest occur "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a).

Second, § 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, as the

regulation allows, it would obviate the statute's creation of certain exceptions for warrantless arrests. In other words, to apply § 287.3 in situations where neither § 1226 or § 1357 was followed, Respondents would essentially be allowed 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 indefinite periods of time before being given 48 hours more to secure an arrest warrant. Because the plain language of both statutes fully covers situations for arrests with and without warrants, applying the language of § 287.3 would render those statutes meaningless.

In past cases, some courts in this district have relied on two district court decisions whose holdings were based on 8 C.F.R. § 287.3. These cases both held that § 287.3 allowed DHS 48 hours from the time of a noncitizen's arrest to make a custody determination and secure an arrest warrant—and that this time starts from the moment a court's order determines the noncitizen is detained pursuant to § 1226. *See Lopez-Perez v. Johnson*, 26-cv-3083-JLT-SAB, 2026 WL 1506818, at *2 (E.D. Cal. May 29, 2026), and *Garcia De Melo v. Stamper*, 26-cv-152-JAW, 2026 WL 925672, at *5 (D. Me. Apr. 6, 2026). But because § 287.3 directly contradicts the language of both § 1226 and § 1357, these cases cannot provide persuasive authority because they rely on a regulation that is ultra vires to the statutes at issue.

Since § 287.3 is ultra vires to the plain language in both § 1226 and § 1357, the appropriate remedy in Mr. Escobar-Dominguez's case is release. "Habeas is at its core a remedy for unlawful executive detention. 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 that 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).

DHS detained Mr. Escobar-Dominguez in violation of § 1226, which requires issuance of a Notice to Appear *and* a valid arrest warrant. They further detained him without any of the permissible reasons under § 1357 to arrest a noncitizen without a warrant. To now apply 8 C.F.R. § 287.3 would allow an ultra vires act by DHS to trump the plain language of the statutory authority it has been granted. Therefore, Mr. Escobar-Dominguez should be immediately released.

B. Mr. Escobar-Dominguez is not subject to mandatory detention under § 1225(b).

Because Mr. Escobar-Dominguez entered the U.S. without inspection over 22 years ago, he is also not subject to mandatory detention under § 1225. Thus, Mr. Escobar-Dominguez is eligible for a bond hearing under § 1226(a) and should be afforded such a hearing if this Court declines to order his immediate release for the warrant violation.

"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). 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). "Federal 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)).

Section 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). Federal regulations do not prescribe 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)).

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).

Yajure Hurtado 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 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.

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 that the BIA's novel constructions of § 1225(b)(2)(A) and § 1226(a) are not correct.

On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who are at or near the border or other ports of entry, for at least three reasons.

First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies only to persons apprehended at or near the border. As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. at 297, 287. Throughout its text, the statute refers to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); *id.* § 1225(b)(1)–(2) (referring to "inspections" in their titles); *id.* § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"). Many statutory provisions, various regulations, and BIA precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225a; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Petitioner's interpretation accords with these usages.

Second, consistent with the statute's overall focus on the moment of physical entry, § 1225(b)(2)'s plain language limits the statute's reach to persons actively attempting to enter the United States. The statute applies only to those who are *both* "applicants for admission" *and* in the process of "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Because the statute's first clause already limits the provision to "applicants for admission," the phrase "seeking admission" must have a different meaning. Any other reading would constitute "an obvious violation of the rule against surplusage." *Romero*, 2025 WL 2403827, at *10.

On its face, the phrase "seeking admission" suggests an active attempt to enter the country. Congress's use of the present and present progressive tenses "necessarily requires some sort of present-tense action," excluding noncitizens in the interior who are no longer in the process of seeking admission to the U.S. *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the statute's "present-tense active language"). "Realistically speaking," it is hard to accept that the statute's plain language could mean anything else: "[I]f Congress's intention" to detain everyone who entered without inspection "was so clear, why did it take thirty years to notice?" *Romero*, 2025 WL 2403827, at *12.

Third, the statutory history supports a limited reading of § 1225(b)'s reach. When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.). There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b).

Because Mr. Escobar-Dominguez is detained under § 1226, rather than § 1225, he is at a minimum eligible for a bond hearing.

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.
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 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 prior to Petitioner's arrest and at which petitioner's eligibility for bond must be considered, *see, e.g.*, *JACP*, 2025 WL 3013328 at *8; or, at a minimum,
5. Respondents provide Petitioner with a hearing and individualized bond determination within fourteen days of its order unless Petitioner requests a continuance, and Respondents shall make a complete record of the bond hearing available to Petitioner and his counsel at counsel's request; and
6. Any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 24, 2026

s/ Kara Hartzler

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