Tatevik Jennifer Auld
Andrade Auld Law PC
2300 Tulare Street, Suite 250
Fresno, California 93721
Office: (559) 900-2144
jenny@andradeauldlaw.com
CA Bar No. 351657
Counsel for Petitioner

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

OSCAR RICARDO ARGUETA VASQUEZ,

Petitioner,

v.

WARDEN OF THE GOLDEN STATE ANNEX DETENTION FACILITY ET AL.,

Respondents.

No. 1:26-cv-05272-KES-SAB-HC

PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents acknowledge that *Rodriguez Vazquez v. Bostock*, No. 25-6842, 2026 WL 2196424, at *12 (9th Cir. July 30, 2026), holds that 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), governs Mr. Argueta's detention. Doc. 5 at 2. Section 1226(a) authorizes detention only "[o]n a warrant issued by the Attorney General." This Court ordered Respondents to file that warrant. Doc. 4 ¶ 2. Respondents filed "the available records requested by the Court," and no warrant is among them. Doc. 5 at 2 n.1. Their own Form I-213 states that "a warrantless arrest was made." Doc. 5-1 at 2. Where "there is no evidence in the record that petitioner was arrested pursuant to a warrant as required by § 1226(a)," "[p]etitioner's immediate release is the appropriate remedy." *E.A.R.T. v. Wofford*, No. 1:25-cv-01824-KES-SKO, 2025 WL 3645297, at *4 (E.D. Cal. Dec. 16, 2025) (Sherriff, J.).

Respondents invoke no other provision. They do not rely on § 1226(c). They identify no warrantless-arrest authority. They nowhere contend that Mr. Argueta is a danger to the community or a flight risk. And they do not address this Court's direction to explain whether this case is distinguishable from those in which relief has been granted. Doc. 4 ¶ 1. Their sole answer is that Mr. Argueta may "seek a custody redetermination hearing before an immigration judge." Doc. 5 at 2. That is post-deprivation process, and it does not answer the question of what authorizes his custody today.

The Court should grant the Petition and order Mr. Argueta released. In the alternative, it should order Respondents to provide a bond hearing before an immigration judge within seven days at which Respondents bear the burden by clear and convincing evidence, and release Mr. Argueta if the hearing is not timely held.

BACKGROUND

Mr. Argueta is 58 years old, a citizen of El Salvador, and has lived in California for more than twenty-two years without a departure. Doc. 1 ¶ 45. He works in construction with his brother, a United States citizen. Id. His mother is a lawful permanent resident; the Form I-130 visa petition she filed on his behalf in November 2024 had been pending approximately eighteen months when he was arrested and remains pending. Id.; Doc. 1-1 at Ex. 5. He had never been arrested or detained by immigration authorities before June 2026, has never been removed, and has never failed to appear. Id.

Respondents' Form I-213 is the only account of the arrest. On June 10, 2026, officers were assigned to locate a target who was not Mr. Argueta. Doc. 5-1 at 2. The target was driving; the petition alleges that Mr. Argueta's son was driving. Id.; Doc. 1 ¶ 46. Officers stopped the vehicle the two men were traveling in, and it "yielded without incident." Doc. 5-1 at 2. Mr. Argueta, the passenger, produced a Salvadoran consular card in his own name and stated that he had no lawful status. *Id.* Officers ran his information through ten federal systems, including CIS, CLAIMS, and ELIS. They then arrested him without a warrant, stating that "[d]ue to ARGUETA's lack of legal presence in the United States, unknown ties to the community at the time of the encounter, and accessibility of a vehicle," it "was determined that ARGUETA was

likely to abscond before a warrant could be obtained." *Id.* The same form lists his employer as "I DONT KNOW, 345 SOMEWHERE HERE SACRAMENTO" and states that he "does not have children or dependents." Doc. 5-1 at 1-2. The Notice to Appear charging Mr. Argueta is dated June 9, 2026, the day before the encounter, and was served on June 10. Doc. 5-2 at 1, 3.

Respondents produced no Form I-200 warrant of arrest and no Form I-286 notice of custody determination. Mr. Argueta has been detained continuously since his arrest, Doc. 1 ¶¶ 21, 46, and has never been served with a notice to appear, a notice of custody determination, or any document explaining the basis for his detention, Doc. 1 ¶ 47. No officer and no immigration judge has made an individualized custody determination. Respondents' criminal-history exhibit reflects two contacts under California Vehicle Code § 12500(a) for driving without a license: a 2009 arrest with no disposition, relieved under California Penal Code § 851.93, and a 2020 misdemeanor conviction resolved by probation and a fine, relieved under Penal Code § 1203.425. Doc. 5-3 at 4-5.

ARGUMENT

I. NO STATUTE AUTHORIZES MR. ARGUETA'S DETENTION.

A. Section 1226(a) requires a warrant, and the warrant this Court ordered Respondents to produce does not exist.

Civil detention must rest on a valid grant of statutory authority. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Section 1226(a) is the "default rule" for noncitizens "already in the country pending the outcome of removal proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 289, 303 (2018), and it conditions that authority on a warrant: "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained." 8 U.S.C. § 1226(a). *See Choglio Chafla v. Scott*, 804 F. Supp. 3d 247, 256-61, 264 (D. Me. 2025) ("Issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)"; "absent a warrant a noncitizen may not be . . . detained under § 1226(a)"); *Choc v. Johnson*, No. 1:26-cv-02768-JLT-SAB-HC, 2026 WL 1257062, at *3-4 (E.D. Cal. May 7, 2026) (Boone, M.J.), *adopted in relevant part*, 2026 U.S. Dist. LEXIS 150908 (E.D. Cal. July 8, 2026); *J.A.C.P. v. Wofford*, 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (Sherriff, J.).

Even assuming the warrantless arrest was valid, Respondents still had to justify continued custody. After a warrantless arrest, DHS must make a custody determination within forty-eight hours, absent emergency or extraordinary circumstances, addressing whether the person will be detained or released and whether a notice to appear and warrant of arrest will issue. 8 C.F.R. § 287.3(d); see also 8 C.F.R. § 236.1(c)(8). *See Makuiza v. Wesling*, 826 F. Supp. 3d 176, 180, 183-84 (D. Me. 2026) ("when arrests are made without a warrant, a custody determination must ordinarily be made within 48 hours, accompanied by a notice to appear, and in the case of continued custody a warrant will be issued post hoc"; ordering release where continued detention "violate[d] the INA and governing regulations absent a demonstration of reasonable cause for it"). Respondents produced no Form I-286, no Form I-200, and no record showing compliance. The Petition asked the Court to order production of exactly those records. Doc. 1 ¶¶ 74-76.

The absence of a warrant is not an artifact of an undeveloped record. This Court ordered Respondents to file the Alien File and all relevant documentation, "including Form I-213 and Form I-200." Doc. 4 ¶ 2. Respondents filed three exhibits and represented that they were attaching "the available records requested by the Court." Doc. 5 at 2 n.1. The I-200 was not among them, and their own exhibit says so affirmatively: "a warrantless arrest was made." Doc. 5-1 at 2. Directed to produce the document that would authorize this detention, Respondents have represented that it does not exist.

Nor is there any retroactivity concern. Where courts in this district have set a prospective forty-eight-hour clock rather than ordering release, the stated reason was that respondents "do not concede" the petitioner "is subject to § 1226(a) but rather maintain . . . he is subject to mandatory detention under § 1225(b)(2)." Respondents here acknowledge that § 1226(a) governs. Doc. 5 at 2. There is nothing prospective to fix about a clock that expired weeks ago.

B. No other detention provision is available to Respondents.

Section 1225(b)(2)(A), under which DHS detained Mr. Argueta, is foreclosed. *Rodriguez Vazquez*, 2026 WL 2196424, at *12. Respondents "maintain the position" that it governs, Doc. 5 at 2, but preserving an objection to controlling circuit precedent is not the identification of authority to detain.

Section 1226(c) is not invoked, and could not be. Driving without a license is a non-violent licensing offense, is not a crime involving moral turpitude, and falls nowhere within 8 U.S.C. § 1182(a)(2). "The contention that an arrest, without more, constitutes evidence of criminal activity is without merit." *Garcia v. Warden*, No. 1:26-cv-03132-KES-SAB-HC, 2026 WL 1257228, at *1 (E.D. Cal. May 7, 2026) (Boone, M.J.); *see Adan-Boada v. Warden of the Cal. City Det. Ctr.*, 2026 U.S. Dist. LEXIS 100631, at *1 n.1 (E.D. Cal. May 6, 2026) (Sherriff, J.). Both of Mr. Argueta's contacts received state relief. Doc. 5-3 at 4-5.

Finally, Respondents invoke no warrantless-arrest authority at all. Their response cites § 1225(b)(2)(A) and nothing else. The only thing in the record purporting to justify proceeding without a warrant is the I-213's own recital that officers "determined that ARGUETA was likely to abscond before a warrant could be obtained." Doc. 5-1 at 2. A recital is not a grant of authority, and the statute whose language it tracks would not supply one: 8 U.S.C. § 1357(a)(2) permits a warrantless arrest in narrow circumstances but authorizes an arrest and nothing more. The authority to detain pending removal proceedings comes from § 1226, which requires a warrant.

C. The escape finding on which Respondents' officers relied is contradicted by the records they had just searched.

Two of the three stated bases are not evidence of flight at all. Lack of lawful presence goes to removability; if it sufficed, no warrant would ever be required. "Accessibility of a vehicle" describes a car belonging to someone else, which officers had already stopped and controlled.

The third is contradicted. Officers said Mr. Argueta's ties to the community were "unknown," but they had just queried federal systems that should have reflected, or led them to, the Form I-130 filed by his lawful permanent resident mother. Doc. 5-1 at 2; Doc. 1 ¶ 50; Doc. 1-1, Ex. 5. They were also executing an operation directed at the driver of the car, whom the Petition identifies as Mr. Argueta's son, and they removed Mr. Argueta from the passenger seat beside him. Doc. 5-1 at 2; Doc. 1 ¶ 46. A lawful permanent resident mother with a pending petition and a son in the same vehicle are not unknown ties. The form confirms the point: it says Mr. Argueta "does not have children or dependents" while describing an operation aimed at his

son, and gives his employer as "I DONT KNOW." Doc. 5-1 at 1-2. Those are not findings but a record of what the officers did not ask.

The narrative runs the other way. The vehicle yielded without incident, Mr. Argueta identified himself truthfully, and there was no flight, no resistance, no false name, and no evasion of immigration authorities in twenty-two years. Officers with time to query ten federal databases at the roadside had time to seek a warrant. DHS had in fact prepared the charging document the day before. Doc. 5-2 at 1.

II. IMMEDIATE RELEASE IS REQUIRED BECAUSE RESPONDENTS IDENTIFY NO LAWFUL BASIS OR URGENT INTEREST FOR CONTINUED CUSTODY.

This Court has stated the governing rule: where "the government does not assert any other basis for petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate remedy is petitioner's immediate release." *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1119-20 (E.D. Cal. 2025). Each condition is satisfied on the face of Respondents' filing. Section 1225(b)(2)(A) was the only authority DHS asserted; Respondents acknowledge it does not govern; they assert no other basis; and they do not argue flight risk or danger. That is the inquiry this Court applied in *Lepe*, and it does not turn on whether Mr. Argueta was previously released, on whether he has a criminal record, or on whether an individualized custody determination has been made. None has, because Respondents never made one.

The same conclusion follows from the warrant defect. The same conclusion follows from the warrant defect. Findings and recommendations in this district have twice recommended immediate release on that ground, each time resting on three findings: that nothing in the record indicates a warrant was issued, that the record shows no prior arrest or charge, and that respondents do not contend the petitioner is a danger or flight risk. *Choc*, 2026 WL 1257062, at *4 (findings adopted as to § 1226(a); remedy modified); *Lopez-Perez v. Johnson*, No. 1:26-cv-03083-JLT-SAB-HC, 2026 WL 1265741, at *4 (E.D. Cal. May 7, 2026) (Boone, M.J.) (same). This Court has entered that relief. *See Ortiz Domingo v. Warden, Mesa Verde Det. Ctr.*, No. 2:26-cv-01299-KES-SAB, 2026 WL 962746, at *3-4 (E.D. Cal. Apr. 9, 2026); *Tix v. Warden*, No. 2:26-cv-01169-KES-SAB, 2026 U.S. Dist. LEXIS 74258, at *2 (E.D. Cal. Apr. 3, 2026).

Mr. Argueta satisfies the first and third findings, and his traffic record does not justify a different remedy. In *Caldo v. United States AG*, No. 1:26-cv-04281-KES-FJS, 2026 U.S. Dist. LEXIS 151887, at *2-3 (E.D. Cal. July 9, 2026) (Sherriff, J.), the government argued that arrests for driving without a license and driving under the influence, plus a reckless driving conviction carrying twelve months of probation, warranted post-deprivation process. This Court held that the sentence "may be relevant to a neutral decisionmaker's determination as to whether petitioner is entitled to bond," but "does not eliminate petitioner's due process right to a such determination," and that "[c]ourts typically require evidence of urgent concerns or an especially strong government interest to justify a post-deprivation, rather than a pre-deprivation, hearing," which respondents had not identified. The petition was granted and immediate release ordered. *Id.* at *3. Mr. Argueta's record is lighter: one relieved misdemeanor, six years old, and a 2009 arrest with no disposition, neither connected to his arrest. Respondents identify no urgent concern of any kind.

Respondents also declined this Court's direction to address "whether this case is distinguishable from those cases in which this Court has granted habeas relief." Doc. 4 ¶ 1. That silence is ordinarily dispositive: "As respondents have not made any new legal arguments and have not identified any factual or legal issues in this case that would distinguish it from the Court's prior decisions . . . the petition for writ of habeas corpus is GRANTED." *Caldo*, 2026 U.S. Dist. LEXIS 151887, at *3; *accord Ines R.T. v. Chestnut*, 2026 WL 175288, at *1 (E.D. Cal. Jan. 21, 2026). Exhaustion poses no obstacle; it is prudential and excused where futile, and the Petition documents that immigration judges have declined bond jurisdiction over noncitizens charged as Mr. Argueta is. *See Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017); Doc. 1 ¶ 7 & Exs. 1-2.

III. IN THE ALTERNATIVE, THE COURT SHOULD ORDER A BOND HEARING WITHIN SEVEN DAYS AT WHICH RESPONDENTS BEAR THE BURDEN, AND RELEASE MR. ARGUETA IF IT IS NOT TIMELY HELD.

If the Court declines immediate release, the alternative is not to leave Mr. Argueta to seek bond on his own initiative. It is the order this Court enters when granting relief short of release:

Respondents provide "a bond hearing before a neutral arbiter pursuant to 8 U.S.C. § 1226(a) and its implementing regulations" within a fixed period, and if they do not, "respondents must release him." *Rojas-Carrillo v. Warden of the Golden State Annex Det. Facility*, No. 1:26-cv-03211-KES-SAB, 2026 WL 1911880, at *2 (E.D. Cal. July 1, 2026); *accord Sushil v. Warden*, 2026 U.S. Dist. LEXIS 95742, at *2 (E.D. Cal. Apr. 30, 2026) (Sherriff, J.) (seven days).

The burden at that hearing belongs to Respondents. When this Court directs a bond hearing under § 1226(a), it directs one "that complies with the requirements set forth in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), and where 'the government must prove by clear and convincing evidence that [Petitioner] is a flight risk or a danger to the community to justify denial of bond,'" and that if the petitioner is not found to be a danger or so great a flight risk as to require detention without bond, the immigration judge "should consider Petitioner's financial circumstances and alternative conditions of release" under *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017). *Escobar-Contreras v. Warden of the Golden State Annex Det. Facility*, 2026 WL 948390, at *18-19 (E.D. Cal. Apr. 8, 2026) (Boone, M.J.); *accord Ortiz-Chavez v. Chestnut*, 2026 WL 1146068, at *27 (E.D. Cal. Apr. 28, 2026); *Comparan v. Warden of the Cal. City Det. Facility*, 2026 WL 1414099, at *18 (E.D. Cal. May 20, 2026). That allocation imposes no unfair burden here, because Respondents have never contended, much less shown, that Mr. Argueta is dangerous or likely to flee. Petitioner requests this relief as a floor, not as a substitute for immediate release.

CONCLUSION

Respondents acknowledge the statute that governs and cannot produce the warrant it requires. They invoke no other provision, none is available, and they have never contended that Mr. Argueta is a danger or a flight risk. Petitioner respectfully requests that the Court grant the Petition, order his immediate release with return of the property seized at his arrest, and enjoin re-detention absent a pre-deprivation bond hearing before a neutral decisionmaker at which Respondents prove by clear and convincing evidence that custody is legally justified. In the alternative, Petitioner requests a bond hearing within seven days, with release if it is not timely held.

Dated: August 5, 2026

Respectfully Submitted,

/s/ Tatevik Jennifer Auld
Tatevik Jennifer Auld, CA Bar No. 351657
Andrade Auld Law PC
2300 Tulare Street, Suite 250
Fresno, California 93721
Office: (559) 900-2144
jenny@andradeauldlaw.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2026, I electronically filed the foregoing Petitioner's Traverse in Support of Petition for Writ Of Habeas Corpus with the Clerk of the Court using the CM/ECF system, which will serve and provide a notice of electronic filing (NEM) to all counsel of record.

Dated: August 5, 2026

Respectfully Submitted,

/s/ Tatevik Jennifer Auld

Tatevik Jennifer Auld, CA Bar No. 351657
Andrade Auld Law PC
2300 Tulare Street, Suite 250
Fresno, California 93721
Office: (559) 900-2144
jenny@andradeauldlaw.com

Counsel for Petitioner