

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03860-SBP

DENIIS MERCHAN-PACHEO,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security;
PAM BONDI, U.S. Attorney General;
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs
Enforcement; and
JUAN BALTAZAR, Warden of Denver Contract Detention Facility,

Respondents.

**RESPONDENTS' COMBINED RESPONSE TO PETITION FOR WRIT OF HABEAS
CORPUS AND MOTION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION (ECF Nos. 1 & 2)**

Respondents respond to the Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, ECF No. 1 (filed 12/1/25) and Petitioner's Motion for A Temporary Restraining Order and Preliminary Injunction, ECF No. 2 (filed 12/1/25). The Court ordered Respondents to show cause why the Petition should not be granted. ECF No 7.

The Court should deny the Petition because Petitioner's detention is lawful. Petitioner is a noncitizen subject to mandatory detention during the pendency of his removal proceedings because he meets the statutory definition of an "applicant for admission," and because, by virtue of that status, he is deemed to be seeking admission to the United States. Due process does not require a bond hearing before the removal proceedings are final, nor does it require Petitioner's custody to be reviewed *while* his custody determination is being reviewed on appeal by the

Board of Immigration Appeals. The automatic stay pending the Board of Immigration Appeals' ruling on Petitioner's bond eligibility neither offends due process nor is ultra vires. Finally, Petitioner fails to show a violation of regulations related to his arrest.

BACKGROUND

I. Statutory Background

Applicants for admission. In the Immigration and Nationality Act ("INA"), Congress determined when certain aliens may or must be detained or removed. As relevant here, 8 U.S.C. § 1225 governs detention and removal of "applicants for admission." An applicant for admission is an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . ." 8 U.S.C. § 1225(a)(1).

The rules of whether such aliens may be detained are found in Section 1225(b). Section 1225(b)(1) governs the inspection and detention of a set of aliens not relevant here—those who are arriving and inadmissible on various grounds. *See* 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). Section 1225(b)(2) is a "catchall" provision that applies to any "applicants for admission" not covered by Section 1225(b)(1). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under Section 1225(b)(2)(A), any "applicant for admission" "shall be detained for" removal proceedings under 8 U.S.C. § 1229a "if the examining immigration officer determines that an alien seeking admission" into the United States is "not clearly and beyond a doubt entitled to be admitted." In other words, for those aliens subject to Section 1225(b)(2)(A), detention is mandatory during removal proceedings. Section 1225 does not provide for bond hearings during removal proceedings.

The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523

(2003). Detention “gives immigration officials time to determine an alien’s status without running the risk of the alien’s either absconding or engaging in criminal activity before a final decision can be made.” *Jennings*, 583 U.S. at 286.

Unaccompanied minors. An “unaccompanied alien child” sought to be removed by DHS shall be placed in removal proceedings under 8 U.S.C. § 1229a. 8 U.S.C. § 1232(a)(5)(D). If an unaccompanied alien child is in the custody of the Department of Health and Human Services, and, upon reaching 18 years of age, “is transferred to the custody of the Secretary of Homeland Security, the Secretary shall consider placement in the least restrictive setting available after taking into account the alien’s danger to self, danger to the community, and risk of flight.” *Id.* § 1232(c)(2)(A)-(B).

II. Factual Background

Petitioner is a 20-year-old native and citizen of Ecuador. ECF No. 1 ¶ 12; **Exhibit 1**, Declaration of Rosa Escareno ¶ 4. Petitioner came to the United States as an unaccompanied minor in 2021, at the age of 16. ECF No. 1 ¶ 19; Escareno Decl. ¶ 7. He was never admitted to, nor paroled into, the United States. Escareno Decl. ¶¶ 5-6. DHS did not file removal proceedings at the time, in 2021. ECF No. 1 ¶ 20; Escareno Decl. ¶ 8. Petitioner was released to his mother on or about September 20, 2021. Escareno Decl. ¶ 9. In 2023, after Petitioner turned 18 years old, ICE commenced removal proceedings against him. ECF No. ¶¶ 19 (date of birth), 23 (removal proceedings); Escareno Decl. ¶ 10.

On August 8, 2025, Petitioner was detained by U.S. Customs and Border Protection pursuant to a warrant. ECF No. 1 ¶¶ 26, 44 (“Petitioner was re-detained in August 2025 on a warrant”); *see also* Escareno Decl. ¶ 11. On the same date, he filed a Form I-589 application for asylum and for withholding of removal. Escareno Decl. ¶ 13.

Petitioner made multiple requests for additional time to prepare his case for removal proceedings. *Id.* ¶¶ 16-22. On November 19, 2025, an immigration judge granted Petitioner’s bond request, finding that removal proceedings for an unaccompanied minor made him eligible for discretionary release. *Id.* ¶ 24; ECF No. 1, Ex. G at 1-2. The following day, ICE submitted a notice of intent to appeal the custody redetermination, and it later appealed the bond order. ECF No. 1, Ex. H at 1; Escareno Decl. ¶¶ 24, 27. The Board of Immigration Appeals (BIA) set a briefing schedule and will issue a notice of hearing when a hearing date is set. Escareno Decl. ¶ 30. Petitioner’s removal proceedings remain pending. *Id.* ¶ 31. Petitioner is being detained while his removal proceedings are pending pursuant to 8 U.S.C. § 1225(b). *Id.* ¶ 15.

III. Procedural Background

In the Petition, Petitioner advances three challenges. First, he claims that the application of an automatic stay of the immigration judge’s order granting his bond, per 8 C.F.R. § 1003.19(i)(2), violates due process. ECF No. 1 ¶¶ 87-88; *see also* ECF No. 2 at 13 (arguing that the “claim that the automatic stay . . . violated Petitioner’s due process rights” was likely to succeed) (capitalization removed). Second, Petitioner argues that the automatic stay regulation exceeded the Attorney General’s delegation authority and is therefore unlawful as *ultra vires*. ECF No. 1 ¶ 91. Finally, Petitioner claims that the United States “failed to follow immigration-specific arrest and processing regulations.” *Id.* ¶ 93. In the motion for preliminary injunction, Petitioner focuses on his due process claim, *see* ECF No. 2 at 13 (arguing he is likely to succeed on his due process claim).

STANDARD OF REVIEW

To obtain a preliminary injunction, the moving party must prove: (1) that he is “substantially likely to succeed on the merits”; (2) that he will “suffer irreparable injury” if the

court denies the injunction”; (3) that his “‘threatened injury’ (without the injunction) outweighs the opposing party’s under the injunction”; and (4) that “the injunction isn’t ‘adverse to the public interest.’” *Chiles v. Salazar*, 116 F.4th 1178, 1199 (10th Cir. 2024) (quoting *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019)). The third and fourth factors “merge” when the government is the party opposing injunctive relief. *Id.* Where the “requested injunction would ‘change[] the status quo,’ the preliminary injunction motion is considered ‘disfavored,’” and the moving party “must make a ‘strong showing’” that the likelihood-of-success-on-the-merits and balance-of-harms factors tilt in his favor. *Id.* at 1199-1200 (quoting *Free the Nipple*, 916 F.3d at 797).

To obtain habeas relief, Petitioner must establish that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).

ARGUMENT

I. Petitioner’s due process challenge lacks merit (Claim 1).

A. Petitioner is subject to mandatory detention during his removal proceedings, which the Supreme Court has held does not raise constitutional concerns.

Petitioner’s primary challenge is that the automatic stay of the immigration judge’s order to release him on bond violates due process. *See* ECF No. 2 at 15. But Petitioner cannot establish that he is “in custody” because of the automatic stay (as opposed to the mandatory-detention statute) because he is subject to *mandatory* detention under Section 1225(b).

Petitioner is an “applicant for admission” to the United States because he is an “alien present in the United States who has not been admitted,” and such aliens “shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1); *see also* Escareno Decl. ¶¶ 5-6, 10, 18 (stating that Petitioner has never been admitted or paroled into the United

States and that Petitioner admitted the allegations and charge in his Notice to Appear, which stated that Petitioner was inadmissible on the grounds of being present in the United States without being admitted or paroled). There is no question in this case that Petitioner is “seeking admission” to the United States, as an applicant for admission who is also seeking asylum. *See* ECF No. 1 ¶¶ 24, 25, 30, 94; Escareno Decl. ¶ 13. Because Petitioner “is not clearly and beyond doubt entitled to be admitted,” he “*shall* be detained for a proceeding under section 1229a” of the INA. 8 U.S.C. § 1225(b)(2)(A). Because he is subject to mandatory detention, the immigration judge erred in granting him release on a discretionary bond. In other words, Plaintiff is properly in custody because of the mandatory detention provision of § 1225(b)(2)(A), not the automatic stay, and is not eligible for discretionary bond.

Petitioner argues that he is being detained under 8 U.S.C. § 1226, not § 1225. He claims that § 1225 is only intended to reach noncitizens who are arriving at a port of entry or those who recently entered the country. ECF No. 2 at 7-8. But the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. 104-208 (Sept. 30, 1996), shows otherwise. Prior to 1996, “the INA provided for inspection of aliens only when they were arriving at a port of entry.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222 (BIA 2025). But Congress replaced the “entry doctrine” with a focus on whether the person present in the United States had been “admitted.” *Id.* at 223-24 (quoting H.R. Rep. No. 104-469, pt. 1, at 225 (1996)). IIRIRA had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). The scope of § 1225(b)(2) contains no temporal limitation that Petitioner

describes.¹ See *Jennings*, 583 U.S. at 287 (describing § 1225(b)(2) as a “catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)”) (emphasis added). Because Plaintiff is present in the United States without having been admitted, he is subject to mandatory detention.

Petitioner also suggests that he is being detained under § 1226, and thus bond-eligible, because ICE documents reference INA § 236. See ECF No. 1 ¶¶ 26, 28, 44. But the BIA rejected the same argument in *Yajure Hurtado*. Not “*all* aliens detained while in the United States with a warrant of arrest are detained under section 236(a) [§ 1226(a)] and entitled to a bond hearing before the Immigration Judge, regardless of whether they are applicants for admission under section 235(b)(2)(A) [§ 1225(b)(2)(A)].” 29 I. & N. Dec. at 227. “[T]he mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for an alien who falls under section 235(b)(2)(A).” *Id.*

Petitioner also suggests that the Trafficking Victims Protection Reauthorization Act (“TVPRA”) precludes mandatory detention, because subjecting him to mandatory detention would render “void” part of the statute that describes how minors who are transferred from HHS custody to DHS custody are to be housed. ECF No. 1 ¶¶ 41-43. But Petitioner’s conclusion does not follow. Petitioner’s argument draws on statutory and regulatory language about minors who are “in the custody” of HHS and placed in removal proceedings as minors. See *id.* (citing 8

¹ As the BIA noted, adopting Petitioner’s theory that § 1225(a)(2)(B) applies only to recent applicants for admission would require the conclusion “that Congress intended that aliens unlawfully entering the United States without inspection, particularly those who successfully evaded apprehension for more than 2 years, be rewarded with the opportunity for a bond hearing . . . whereas aliens who present themselves to officers at a port of entry are ineligible This is an incongruous result which is not supported by the plain language or any reasonable interpretation of the INA.” *Yajure Hurtado*, 29 I. & N. Dec. at 228.

U.S.C. § 1232(a)(2)(D), (c)(2)(B), and 8 C.F.R. § 236.3(f), among others). Here, by contrast, Petitioner is not a minor child, removal proceedings were not conducted when he was a minor child, and his custody was not transferred from HHS to DHS. *See* ECF No. 1 ¶¶ 12, 19, 23; Escareno Decl. ¶¶ 9, 11-12. The TVPRA thus does not control Petitioner’s detention.

Mandatory detention under § 1225(b)(2)(A) does not violate due process. In *Demore*, the Supreme Court explained that noncitizens who were convicted of certain crimes may be detained during the course of their removal proceedings. 538 U.S. at 513. In that case, like this one, Congress mandated detention of certain categories of aliens pending removal proceedings. *See id.*; 8 U.S.C. § 1226(c); *see also Sierra v. INS*, 258 F.3d 1213 (10th Cir. 2001) (“Ordinarily, . . . ‘[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.’”). The Court reasoned that the “definite termination point” of the detention at the end of removal proceedings assuaged any constitutional concern. *See Demore*, 538 U.S. at 529; *see also Basri v. Barr*, 469 F. Supp. 3d 1063, 1073-74 (D. Colo. 2020) (“In *Demore*, the Court held that the Fifth Amendment does not require a bond hearing for an alien detained under” the mandatory detention scheme of “Section 1226(c),” and the government can detain an alien *without bond* for the entirety of his removal proceedings.”) (emphasis in original); *see also Aguayo v. Martinez*, No. 20-cv-00825-DDD-KMT, 2020 WL 2395638, at *3 (D. Colo. May 12, 2020) (holding that the petitioner’s nine-month detention under a mandatory detention scheme “does not violate the Constitution”). The Court should reach the same conclusion here with respect to Petitioner, who is detained under Section 1225(b)(2)(A). *See* Order Denying Motion for Preliminary Injunction, at 7-13, *Orande Ahinsha Richards v. Choate*, No. 25-cv-03134-DDD-STV (D. Colo. Dec. 5, 2025), ECF No. 19 (discussing due process considerations of detention under § 1225(b), and concluding “procedural due process does not afford inadmissible arriving

aliens subject to prolonged detention a right to release or a bond hearing prior to the conclusion of removal proceedings”).

B. Petitioner’s automatic-stay challenge lacks merit.

Even if the basis of Petitioner’s custody were the automatic stay, rather than the statutory provision requiring his mandatory detention, his due process challenge would fail.

1. The Supreme Court has upheld mandatory detention while removal proceedings are pending.

As explained above, the Supreme Court has held that mandatory detention during the pendency of removal proceedings does not violate due process. *See Demore*, 538 U.S. at 531 (“Detention during removal proceedings is a constitutionally permissible part of that process.”). Central to the Supreme Court’s reasoning was the fact that the mandatory detention had “a definite termination point”—the end of the removal proceedings—distinguishing this case from the potentially indefinite detention addressed in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See Demore*, 538 U.S. at 528-29.

Here, there is a similar definite termination point. The automatic stay expires after 90 days, or no more than 120 days in narrow circumstances (*if* DHS moves for an additional discretionary stay *and* the BIA fails to rule on *either* the underlying appeal *or* the extension motion before the automatic stay lapses). *See* 8 C.F.R. § 1003.6(c)(4) (“If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal.”); *id.* § 1003.6(c)(5) (the automatic stay “will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary

stay”). Either way, the automatic stay has a “definite termination point.”² *See Demore*, 538 U.S. at 529. And it cannot last longer than 120 days.

Also significant to the *Demore* Court was the fact that, while “the Fifth Amendment entitles aliens to due process of law in deportation proceedings,” “Congress may make rules as to aliens that would unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522-23; *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (noncitizens who have not been admitted have “only those rights regarding admission that Congress has provided by statute.”). Here, Congress has authorized mandatory detention of Petitioner, *see* 8 U.S.C. § 1225(b)(2)(A), and authorized the Attorney General to develop additional rules respecting bond. 8 U.S.C. § 1103(g)(2). Congress has not provided Petitioner the right to be released on bond pending appeal of an immigration judge’s order. And Petitioner fails to explain why due process would require him to be released or his custody be reviewed *while the BIA is already in the process of reviewing his custody* on a finite timeline.

In short, the Supreme Court has never held that a noncitizen has a due process right to a bond hearing during removal proceedings that have a definite termination point.³

² Other automatic stays of no more than 5 or 15 days—each following the BIA’s ruling on the appeal—are contemplated in the regulations, but neither has been invoked in Petitioner’s case, and Petitioner does not suggest otherwise. *See* 8 C.F.R. § 1003.6(d); Escareno Decl. ¶ 30. Petitioner does not contend that discretionary stays violate due process. *See* ECF No. 1 ¶ 61.

³ Due process concerns about the automatic stay were addressed at length by the Department of Justice when the regulation was adopted. *See* Review of Custody Determinations, Executive Office for Immigration Review, Justice, 71 Fed. Reg. 57873, 57876-57881 (2006) (justifying the regulation in response to comments about due process rights to freedom from restraint, indefinite detention, and a meaningful opportunity to challenge detention). The Department of Justice also justified its interest in the stay rule with statistics about the difficulties of removing aliens who were *not* detained, establishing a strong interest in preventing flight risks. *See id.* at 57882.

2. The *Mathews* factors do not apply.

Petitioner argues that his due process challenge is governed by the three-factor test in *Mathews v Eldridge*, 424 U.S. 319, 335 (1976). See ECF No. 2 at 14-17; see also ECF No. 1 ¶¶ 54, 63, 68, 85. But the Supreme Court has not applied the *Mathews* analysis in this context.

In *Demore*, the Supreme Court expressly addressed due process implications of detention pending removal proceedings and never suggested that it was proper to use the *Mathews* factors. See generally 538 U.S. at 517-31. Rather, to resolve the due process challenge, the Supreme Court noted differences in the immigration context (“Congress may make rules as to aliens that would be unacceptable if applied to citizens,” *id.* at 522), and considered that detention was “necessarily a part of this deportation procedure,” *id.* at 524 (quoting *Carlson v. Landon*, 342 U.S. 524, 538 (1952)), and not indefinite, *id.* at 527-29. In *Thuraissigiam*, the Supreme Court addressed due process issues about admission and likewise made no reference to *Mathews*. See 519 U.S. at 138-40. In *Zadvydas*, the Supreme Court considered due process implications of “indefinite detention” when deportation was “no longer practically attainable,” 533 U.S. at 690, and considered the justification for nonpunitive detention against the individual’s interest in avoiding physical restraint, but did not cite *Mathews* or employ its three-factor test. See *id.* at 690-701. Indeed, just a few months after deciding *Mathews*, the Supreme Court considered a different due process question about “an alien’s eligibility for participation in a federal medical insurance program,” and did not apply the three-factor test in *Mathews*. *Mathews v. Diaz*, 426 U.S. 67, 69 (1976). As explained above, in *Demore*, the Supreme Court concluded that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” 538 U.S. at 531. The Court need not conduct a separate analysis.

II. Petitioner’s ultra vires challenge lacks merit (Claim 2).

Petitioner’s second claim challenges the automatic-stay regulation as *ultra vires*, because, he claims, it “exceeds the authority granted to the Attorney General by Congress and unlawfully deprives IJs of their discretionary authority to make custody decisions.” ECF No. 1 ¶ 77.

Petitioner argues that the Attorney General has delegated bond determinations to immigration judges, not DHS. *Id.* ¶¶ 78-79. Again, this argument misapprehends the regulatory scheme developed by the Department of Justice.

As explained above, bond determinations are made by the Attorney General, not immigration judges. *See* 8 U.S.C. § 1103(g)(2). The Attorney General has authorized immigration judges to make initial bond determinations, many of which become final orders as a practical matter. But immigration judges’ decisions are not necessarily final under the regulatory scheme designed by the Attorney General—and the immigration judge’s order is not final in this case. *See* 8 C.F.R. § 1003.1(d)(7) (giving the BIA final decision-making authority, except for those cases reviewed by the Attorney General); 8 C.F.R. § 1003.19(i)(2) (staying the immigration judge’s order pending review by the BIA); Escareno Decl. ¶¶ 24, 27 (noting ICE’s appeal of the bond order). Therefore, it is mistaken to characterize the regulation as permitting DHS to interfere with an immigration judge’s discretion to grant a bond, because the Attorney General did not give sole discretion to immigration judges to make final custody determinations, and the final determination has yet to be made under process the Department of Justice devised.

Properly viewed, the regulation permits DHS to invoke an administrative appellate procedure (a process created by the Department of Justice) that is part of Petitioner’s ongoing custody determination (currently under review by the Department of Justice), and the regulation (created by the Department of Justice) sets a default rule that when such appellate procedure is

invoked, the immigration judge's order should be automatically stayed. The Department of Justice did not delegate to DHS the regulatory authority granted by Congress or permit DHS to "unilaterally" override a final bond determination made by the Attorney General. The regulation simply maintains the status quo until the Attorney General has made a final bond determination, whether through the BIA or by the Attorney General herself. *See* 71 Fed. Reg. at 57880 ("The Attorney General provided, as a matter of discretion, that the alien should continue to be detained for a period of time necessary to allow for the Board to review the case.").

While it is true that the "Department of Justice has decided to make the trigger point for the automatic stay the decision by ICE to pursue an expedited appeal of a bond ruling," "[n]othing in the regulation exceeds the Department of Justice's authority or reflects an improper delegation of that authority to ICE." *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *11 (E.D. Wis. Oct. 30, 2025). As the Supreme Court has explained, "Congress has empowered the Secretary [of Homeland Security] to enforce the Immigration and Nationality Act, . . . though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law." *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019). Nothing in the automatic stay regulation ceded the Attorney General's authority to make a final decision on a bond to DHS. Petitioner does not explain why this default rule by the Department of Justice was outside the scope of authority granted to the Attorney General by Congress.

Additionally, the Supreme Court recently explained that an "ultra vires" claim cannot succeed except where the agency order at issue "was an attempted exercise of power that had been specifically withheld,' and the agency's order violated a 'specific prohibition' in the Act." *Nuclear Regul. Comm'n v. Texas*, 605 U.S. 665, 681 (2025) (hereinafter *NRC*) (quoting *Leedom v. Kyne*, 358 U.S. 184, 188-89 (1958)). The Court explained that such an ultra vires argument

cannot be accepted “simply because an agency has arguably reached a conclusion which does not comport with the law,” because then “ultra vires review could become an easy end-run around the limitations of . . . other judicial-review statutes.” *Id.* (quotation marks omitted). “Rather, it applies only when an agency has taken action entirely in excess of its delegated powers and contrary to a *specific prohibition* in a statute.” *Id.* (emphasis in original) (quotation marks omitted).

Here, Petitioner’s ultra vires argument cannot meet this high standard. Petitioner does not identify a provision that Congress adopted *specifically* prohibiting the automatic-stay practice or *specifically* withholding the authority exercised. Absent a specific prohibition on the practice reflected in the automatic-stay provision, Petitioner cannot show that the regulatory provision at issue here is ultra vires, under *NRC*.

III. Petitioner fails to establish a right to relief based on warrantless arrest regulations (Claim 3).

Finally, Petitioner fails to sufficiently explain his third challenge to his detention, based on an asserted violation of 8 C.F.R. § 287.8(c). *See* ECF No. 1 ¶¶ 93-95.⁴ Petitioner claims that the “United States has also failed to follow immigration-specific arrest and processing regulations,” ECF No. 1 ¶ 93, but he does not identify which regulation or how it was violated. He points to regulations that require immigration officials to have a reasonable belief that an individual was present in the United States illegally or, for warrantless arrests, to believe that the individual may escape before a warrant can be obtained. *See id.* But Petitioner does not contend that he currently has legal status, *see generally id.* ¶¶ 30, 94 (asserting that Petitioner merely had

⁴ Petitioner does not discuss this third challenge to his detention as a basis for preliminary relief in his motion. *See generally* ECF No. 2.

a “pending I-589,” but stating that he needed to refile after he was detained); *see also* Escareno Decl. ¶¶ 5-6 (never admitted or paroled), and he pleads that he was detained “in August 2025 *on a warrant.*” ECF No. 1 ¶ 44 (emphasis added). Plaintiff fails to establish a violation of arrest-related regulations. He also has not shown that any defect in his arrest entitles him to release from custody, as opposed to some other relief, where he is an applicant for admission and his detention is mandated by statute, as explained above.

CONCLUSION

The Court should deny Petitioner’s motion and petition.

Respectfully submitted on December 10, 2025.

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CERTIFICATE OF SERVICE

I certify that on December 10, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record, including:

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Counsel for Petitioner

s/Thomas A. Isler
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