

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Jose Luis Salazar Parrales

Petitioner,

v.

David Easterwood, Field Office
Director of Enforcement and Removal
Operations, St. Paul Field Office,
Immigration and Customs
Enforcement; Kristi Noem, in her
official capacity as Secretary of the
U.S. Department of Homeland
Security; Todd Lyons, in his official
capacity as acting director of U.S.
Immigration and Customs
Enforcement; Pam Bondi, in her
official capacity as Attorney General
of the United States.

Respondents.

Case No. 0:26-cv-617

**REPLY TO FEDERAL
RESPONDENTS' RESPONSE
TO PETITION FOR WRIT OF
HABEAS CORPUS**

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Petitioner submits this timely response to Respondent's response to the habeas corpus and TRO. ECF No. 8.

II. Argument

A. Respondents' Concession That § 1226(a) Applies Does Not Moot Habeas Relief or Eliminate the Need for a Court Order

Federal Respondents argue that habeas relief is unnecessary because they agree that Petitioner is detained under § 1226(a) "petitioner will have the opportunity to request a routine bond hearing." This position does not moot the issue, nor does it deprive this Court of jurisdiction. ECF No. 8 at 3.

Many courts in this District have recognized DHS concessions do not guarantee that an Immigration Judge will recognize jurisdiction. *Yeferson G.C., Petitioner, v. David Easterwood, et al.*, Respondents., No. 25-CV-4814 (MJD/DJF), 2026 WL 207266, at *2 (D. Minn. Jan. 21, 2026) *adopted by Yeferson G.C. v. Easterwood*, No. 25-CV-4814 (MJD/DJF) at ECF No. 17. Immigration Judges remain governed by the Executive Office of Immigration Review ("EOIR") precedent, regulations and agency policy, not by representations made by government counsel in federal court. As a result, even where Respondents concede § 1226(a) detention, Immigration Judges

may and recently have declined bond jurisdiction based on regulatory provisions purporting to strip that authority. *Id.*

This issue has been identified and addressed by this Court. *Yeferson G.C., Petitioner, v. David Easterwood, et al.*, Respondents., No. 25-CV-4814 (MJD/DJF), 2026 WL 207266, at *2 (D. Minn. Jan. 21, 2026). Judicial intervention is required because without a court order, there is no guarantee that EOIR will exercise jurisdiction. Respondents' assurance that they "will not oppose" a bond hearing does not bind the Immigration Judge and provides no enforceable protection of Petitioner's statutory rights. Accordingly, habeas relief remains appropriate and necessary to ensure that Petitioner receives the § 1226(a) bond hearing to which he is entitled.

B. Respondents Mischaracterize Habeas as Premature

Respondents contend that habeas relief is inappropriate because Petitioner may seek a custody redetermination hearing before an immigration judge and can appeal an immigration judge' custody determination to the BIA. 8 C.F.R. §§ 236.1(c)(8), (d); 1236.1(d)(1); 1003.19. ECF 8 at 3. This argument misunderstands the function of habeas corpus. Where an Immigration Judge may conclude that jurisdiction is lacking, there is no adequate alternative remedy to exhaust. Courts have consistently held that habeas is appropriate where agency regulations or policies threaten to

deprive a noncitizen of a statutory hearing altogether. *Yeferson G.C. v. Easterwood*, 2026 WL 207266, at *2 (D. Minn. Jan. 21, 2026); *Ahmed M. v. Bondi*, 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026); *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).

Here, the Respondent's position depends entirely on the assumption that the Immigration Judge will exercise jurisdiction. But Respondents cannot guarantee that outcome, and their assurances are not binding. Habeas relief is therefore not premature; it is the only mechanism by which this Court can ensure that statutory rights are not nullified in practice.

C. Petitioner's Arrest Was Not Executed "On a Warrant," Rendering Continued Detention Unlawful

Federal Respondents contend that Petitioner's arrest and detention were lawful. ECF No. 8 at 2; ECF No. 9; Minner Decl. 10 and Ex: B (Notice to Appear and arrest warrant). That assertion is contradicted by the undisputed timeline of events. Petitioner was arrested by DHS agents on the evening of January 23, 2026, while on his route for work. He could not have been served with a warrant for arrest until January 25, 2026, the same day he signed the Notice to Appear. *Id.*

An arrest cannot be retroactively justified as a warrant-based arrest by the subsequent issuance or service of an NTA. The sole statutory

authorization for arrest under § 1226(a) requires arrest “on a warrant.” 8 U.S.C.A. § 1226(a) (West). Issuance of a warrant is “a necessary condition to justify discretionary detention” under § 1226(a). *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026). “In the absence of any suggestion that ICE had a warrant” at the time of detention, the appropriate remedy is immediate release. *Velasco Hurtado v. Bondi*, No. 0:26-CV-546, 2026 WL 184884, at *6 (D. Minn. Jan. 24, 2026). At the moment of arrest (January 23, 2026), no warrant existed. What is more, the warrant for arrest provided is dated January 22, 2026, but served upon him on January 25, 2026. ECF: No. 9; ECF; No. 9-2. Minner Decl. ¶ 10 and Ex: B (Notice to Appear and arrest warrant).

Accordingly, Petitioner’s arrest was a warrantless civil arrest. Where DHS arrests a noncitizen without a warrant, it must either promptly establish lawful detention authority or release the individual. Continued detention, absent from a warrant or a lawful custody determination violates both the INA and the Due Process Clause. Here, Respondents did neither. Instead, they detained Petitioner first and then later justified that detention after the fact through delayed service of the NTA.

D. In the Alternative, § 1226(a) Requires Service of the Charging Document at the Time of Arrest

In the alternative, even assuming arguendo that Respondents properly initiated removal proceedings through a valid charging document, § 1226(a) requires that the charging document be served at the time of arrest in order to authorize custodial detention. Where DHS arrests first and serves the charging document later, detention is not authorized under § 1226(a), and immediate release is required, with any subsequent custody determination to occur only after release through a lawful bond hearing.

Section 1226(a) authorizes the arrest and detention of a noncitizen “pending a decision on whether the alien is to be removed from the United States.” That authority presupposes that removal proceedings have been properly commenced at the time custody is imposed. Service of the charging document is the act that vests DHS with detention authority tied to removal proceedings. Without contemporaneous service, DHS lacks statutory authority to detain under § 1226(a).

Here, the charging document may be valid, but the arrest was not. Respondents arrested Petitioner on Friday evening, January 23, 2026, and then served the charging document on July 25, 2026. ECF No. 9-2. Minner

Decl. ¶ 10 and Ex: B (Notice to Appear and arrest warrant); *See* signature pages.

The timing of the events matters. The statute does not permit DHS to effectuate a custodial arrest in anticipation of future service of an NTA. Nor may DHS cure an unlawful arrest retroactively by later serving a charging document. Here detention is imposed without statutory authorization at the moment of arrest, the proper remedy is immediate release. Only after release may DHS seek to justify renewed detention through a lawful custody determination, including a § 1226(a) bond hearing at which an Immigration Judge determines whether redetention is warranted.

Accordingly, even if the Court declines to order relief based on Respondents' conceded § 1226(a) detention, it should order Petitioner's immediate release on the independent ground that the arrest was unlawful due to the absence of contemporaneous service of the charging document and require that any continued custody be justified only through a post-release § 1226(a) bond hearing.

E. Injunctive Relief Is Necessary to Prevent Ongoing and Irreparable Harm

Petitioner remains deprived of liberty based on an unlawful warrantless arrest and an uncertain, unstable detention framework that depends on nonbinding agency concessions. Each additional day of detention

constitutes irreparable harm and additional days he is separated from United States Citizen wife and five children.

Without injunctive relief, Respondents may continue to detain Petitioner. The balance of equities and the public interest strongly favor ensuring that detention occurs only pursuant to lawful authority and constitutionally adequate procedures.

Even accepting Respondents' characterization at face value, their response fails because they have never exercised the discretion § 1226(a) requires. Most notably, Respondent's response completely ignores that Respondents had previously moved to dismiss the Respondent's removal proceedings that resulted in an order of the Immigration Judge to dismiss removal proceedings on June 10, 2021 because Petitioner applied for adjustment of status based on marriage to a U.S. Citizen spouse, an application that has been pending since March 2021 and follows an approved I-130 family relative petition. ECF No. 1-4. Nothing else has changed since that time, other than Operation Metro Surge.

That omission is not harmless. It renders Petitioner's continued detention arbitrary, punitive, and unconstitutional. Accordingly, the Court should grant habeas and TRO relief, or at minimum order Petitioner's immediate release or an expedited bond hearing with appropriate safeguards.

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Respectfully submitted,

/s/ Gloria Contreras Edin

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