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9 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

10 JOSE SAMUEL PIMENTEL LOPEZ,
11

12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
15 TODD BLANCHE, Acting Attorney
16 General, TODD M. LYONS, Acting
Director, Immigration and Customs
17 Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
18 Office, CHRISTOPHER LAROSE,
19 Warden at Otay Mesa Detention Center,

20 Respondents.
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Case No.: 26-cv-3756-JLS-JLB

**Amended Petition
for a
Writ of Habeas Corpus**

INTRODUCTION

Because Mr. Pimentel Lopez 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. Pimentel Lopez’s “immediate release.” *JACP*, 2025 WL 3013328, at *8. At a minimum, however, Mr. Pimentel Lopez is not subject to mandatory detention and should be granted a bond hearing.

STATEMENT OF FACTS

Jose Samuel Pimentel Lopez was born in Mexico. Declaration of Jose Samuel Pimentel Lopez, Exhibit A at ¶ 1. He entered the United States without detection on March 27, 2004. *Id.* at ¶ 2. He has lived in the U.S. since then. *Id.* at ¶ 2. During this entire time, Mr. Pimentel Lopez has never been deported. *Id.* at ¶ 2.

After Mr. Pimentel Lopez came to the U.S., he sought work in restaurants, landscaping, construction, and mechanics shops. *Id.* at ¶ 3. He always paid his taxes and has no criminal history. *Id.* at ¶ 3.

In 2023, Mr. Pimentel Lopez married his wife. *Id.* at ¶ 4. His wife is a U.S. citizen. *Id.* at ¶ 4. Together, they have two children who are both U.S. citizens; one is three years old and the other is seventeen months old. *Id.* at ¶ 4. He is the primary caretaker for his family and works hard to provide for them. *Id.* at ¶ 4.

On March 14, 2026, Mr. Pimentel Lopez was pulled over by a Florida sheriff

1 while on his way to work. *Id.* at ¶ 5. He was arrested for driving without a license
 2 and brought to the local jail. *Id.* at ¶ 5. He was left to wait in jail until ICE came to
 3 pick him up. *Id.* at ¶ 5.

4 ICE picked up Mr. Pimentel Lopez from jail on March 28, 2026. *Id.* at ¶ 6.
 5 They did not show him any warrant or provide him any paperwork related to his
 6 arrest. *Id.* at ¶ 6. The only paperwork he's received is a Notice to Appear in
 7 immigration court. *Id.* at ¶ 6. He has been detained ever since. *Id.* at ¶ 6.

8 LEGAL BACKGROUND

9 **I. Because Mr. Pimentel Lopez is subject to § 1226(a), he cannot be** 10 **arrested without a warrant or mandatorily detained.**

11 Both claims in this habeas petition turn on whether Mr. Pimentel Lopez is
 12 detained under 8 U.S.C. § 1226 or 8 U.S.C. § 1225. In *Matter of Yahure Hurtado*,
 13 29 I&N Dec. 216 (BIA 2025), the BIA held that the inspection, detention, and
 14 removal of *all* noncitizens who have not been admitted to the United States is
 15 governed by 8 U.S.C. § 1225. But courts in this district have widely rejected *Yahure*
 16 *Hurtado*, holding that individuals who entered without inspection and are arrested
 17 months or years later are subject to detention under § 1226.¹ Because Mr. Pimentel
 18 Lopez entered the United States without inspection over 22 years ago, § 1226(a)
 19 governs his detention.

20 But the Immigration and Nationality Act contains two critical statutory
 21 limitations on Respondents' authority to arrest and detain under § 1226(a). First,
 22 Respondents may not arrest someone without first issuing an administrative

23
 24 ¹ See, e.g., *Rodriguez*, 779 F. Supp. 3d at 1260; *Romero v. Hyde*, 2025 WL 2403827
 25 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24,
 26 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025);
 27 *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v.*
 28 *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).

1 warrant. Second, Mr. Pimentel Lopez is not subject to mandatory detention. Here,
 2 Respondents have violated both limitations.

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

5 The statutory authority of ICE officers to arrest non-citizens suspected of
 6 violating immigration laws may only be executed in certain circumstances. First,
 7 “[i]ssuance of a warrant is a necessary condition to justify discretionary detention
 8 under section 1226(a).” *Chogllo Chafila v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me.
 9 2025). Specifically, § 1226 provides that, “[o]n a warrant issued by the Attorney
 10 General, an alien may be arrested and detained.” 8 U.S.C. § 1226(a) (emphasis
 11 added). Such a warrant “must be issued *before* the alien is arrested and taken into
 12 custody.” *Ramos v. Lyons*, 809 F. Supp. 3d 1015, 1023 (C.D. Cal. Nov. 12, 2025).
 13 “[I]t follows that absent a warrant a noncitizen may *not* be arrested and detained
 14 under section 1226(a).” *Chogllo Chafila*, 804 F. Supp. 3d at 264 (emphasis in
 15 original).

16 Additionally, 8 U.S.C. § 1357 specifies the narrow circumstances in which a
 17 noncitizen may be arrested without a warrant. “If no federal warrant has been
 18 issued, [] officers have more limited authority.” *Arizona v. U.S.*, 567 u.S. 387, 408
 19 (2012). That limited authority includes the ability to arrest a noncitizen “who in his
 20 presence or view is entering or attempting to enter the United States in violation of
 21 any law or regulation” or when the officer has “reason to believe” the individual “is
 22 in the United States in violation of [immigration laws] *and* is likely to escape before
 23 a warrant can be obtained for his arrest . . .” 8 U.S.C. § 1357(a)(2) (emphasis added).
 24 “The ‘reason to believe’ language in § 1357(a)(2) is the equivalent of the
 25 constitutional requirement of probable cause.” *Ramirez Ovando v. Noem*, 810 F.
 26 Supp. 3d 1209, 1216 (D. Colo. 2025).

27 But the implementing regulation for these statutes is 8 C.F.R. § 287.3, which
 28 goes far beyond the statutes to create an expansive authority to arrest noncitizens

1 *without* a warrant. Under this regulation, “a determination will be made *within 48*
 2 *hours of the arrest* . . . whether a notice to appear and warrant of arrest as prescribed
 3 in 8 CFR parts 236 and 239 will be issued.” 8 C.F.R. § 287.3(d) (emphasis added).

4 This contradicts the language of the Immigration and Nationality Act in two ways.

5 First, the language of the regulation contradicts § 1226 by granting 48 hours
 6 from the time of arrest to obtain an arrest warrant. The plain language of § 1226
 7 makes clear that, for an officer to detain a noncitizen under § 1226, they must obtain
 8 an arrest warrant *before* that arrest. *See* 8 U.S.C. § 1226(a) (“*On a warrant issued*
 9 *by the Attorney General*, an alien may be arrested and detained.”) (emphasis added).

10 So if a determination could be made “within 48 hours of the arrest” as to whether
 11 to issue a warrant, it would nullify the statute’s plain language stating that the arrest
 12 occur “[o]n a warrant issued by the Attorney General.” 8 U.S.C. § 1226(a).

13 Second, § 1357 provides specific, narrow circumstances in which a
 14 warrantless arrest is appropriate. *See* 8 U.S.C. § 1357(a)(2) (permitting an officer
 15 to arrest someone “who in his presence or view is entering or attempting to enter
 16 the United States” or is “likely to escape before a warrant can be obtained for his
 17 arrest”). If the agency could issue a post-arrest warrant in *every* case, as the
 18 regulation allows, it would obviate the statute’s creation of certain exceptions for
 19 warrantless arrests. In other words, to apply § 287.3 in situations where neither
 20 § 1226 or § 1357 was followed, Respondents would essentially be allowed to ignore
 21 the statute and “cure an unlawful detention by obtaining [an] untimely warrant.”
 22 *Quezada-Estrada*, 2026 WL 1361880 at *5.

23 “Agency actions beyond delegated authority are ‘ultra vires,’ and courts must
 24 invalidate them.” *Jacinto v. Trump*, 796 F. Supp. 3d 584, 592 (D. Neb. 2025)
 25 (quoting *United States ex. rel. O’Keefe v. McDonnell Douglas Corp.*, 132 F. 3d
 26 1252, 1257 (8th Cir. 1998)); *see also Romero v. INS*, 39 F. 3d 977, 980 (9th Cir.
 27 1994) (holding that an immigration regulation that is inconsistent with the statutory
 28 scheme is invalid). Here, the protections of § 1226 or § 1357 would be rendered

1 meaningless if Respondents were allowed to detain non-citizens for indefinite
2 periods of time before being given 48 hours more to secure an arrest warrant.
3 Because the plain language of both statutes fully covers situations for arrests with
4 and without warrants, applying the language of § 287.3 would render those statutes
5 meaningless.

6 In past cases, this Court has relied on two cases whose holdings were based
7 on 8 C.F.R. § 287.3. These cases both held that § 287.3 allowed DHS 48 hours from
8 the time of a noncitizen's arrest to make a custody determination and secure an
9 arrest warrant—and that this time starts from the moment a court's order determines
10 the noncitizen is detained pursuant to § 1226. *See Lopez-Perez v. Johnson*, 26-cv-
11 3083-JLT-SAB, 2026 WL 1506818, at *2 (E.D. Cal. May 29, 2026), and *Garcia*
12 *De Melo v. Stamper*, 26-cv-152-JAW, 2026 WL 925672, at *5 (D. Me. Apr. 6,
13 2026). But because § 287.3 directly contradicts the language of both § 1226 and
14 § 1357, these cases cannot provide persuasive authority because they rely on a
15 regulation that is ultra vires to the statutes at issue.

16 Since § 287.3 is ultra vires to the plain language in both § 1226 and § 1357,
17 the appropriate remedy in Mr. Pimentel Lopez's case is release. "Habeas is at its
18 core a remedy for unlawful executive detention. The typical remedy for such
19 detention is, of course, release." *Cruz-Pedraza v. LaRose*, 26-cv-2697-LL-MSB,
20 2026 WL 1484326, at *2 (S.D. Cal. May 27, 2026) (citing *Munaf v. Geren*, 553
21 U.S. 674, 693 (2008)). "Respondents may not detain first, and justify later[.]"
22 *Quezada-Estrada v. Lyons*, No. 26-cv-1599-NYW, 2026 WL 1361880, *5 (D.
23 Colo. May 2026), and to order anything less that release would do just that.
24 Furthermore, "[t]he language of § 1226(a)'s warrant requirement is unequivocal
25 and does not afford the Government forgiveness simply by providing a bond
26 hearing after the fact." *Jesus Emery M.F. v. Warden*, No. 26-cv-1374-TLN-CKD,
27 2026 WL 849762, *2 (E.D. Cal. Mar. 27, 2026).

28 DHS detained Mr. Pimentel Lopez in violation of § 1226, which requires

1 issuance of a Notice to Appear *and* a valid arrest warrant. They further detained
 2 him without any of the permissible reasons under § 1357 to arrest a noncitizen
 3 without a warrant. To now apply 8 C.F.R. § 287.3 would allow an ultra vires act by
 4 DHS to trump the plain language of the statutory authority it has been granted.
 5 Therefore, Mr. Pimentel Lopez should be immediately released.

6 **B. Mr. Pimentel Lopez is not subject to mandatory detention.**

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

12 **PRAYER FOR RELIEF**

13 For the above reasons, this Court should order that:

- 14 1. Petitioner is not subject to mandatory detention under 8 U.S.C.
 15 § 1225(b)(2), and is instead subject to detention, if at all, pursuant to
 16 the discretionary provisions of 8 U.S.C. § 1226.
- 17 2. Respondents shall immediately release Petitioner from custody;
- 18 3. Respondents shall return to Petitioner any personal property; and
- 19 4. If Respondents seek to re-detain Petitioner, they shall hold a pre-
 20 deprivation bond hearing before a neutral arbiter pursuant to section
 21 1226(a) and its implementing regulations, at which Respondents
 22 shall demonstrate the issuance of a warrant prior to Petitioner's arrest
 23 and at which petitioner's eligibility for bond must be considered, *see*,
 24 *e.g.*, *JACP*, 2025 WL 3013328 at *8; or, at a minimum,
- 25 5. Respondents provide Petitioner with a hearing and individualized
 26 bond determination within fourteen days of its order unless Petitioner
 27 requests a continuance, and Respondents shall make a complete
 28

1 record of the bond hearing available to Petitioner and his counsel at
2 counsel's request; and

3 6. Any other relief that the Court deems just and proper.
4

5 Respectfully submitted,
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7 Dated: July 24, 2026

s/ Hannah Basalone

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