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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ALASKA**
11

12 Son Hoang Vu,

13 Petitioner,

14 v.

15 Warden, Anchorage Correctional

16 Complex, et al.,

17 Respondents.

Case No. 3:26-cv-00027-SLG

**PETITIONER'S RESPONSE TO
FEDERAL RESPONDENTS' RETURN
MEMORANDUM AND MOTION TO
DISMISS
(SUPPLEMENTAL AUTHORITY
REGARDING NTA AND FARO;
OPPOSITION TO MOOTNESS;
REQUEST FOR IMMEDIATE
RELEASE)**

18 **I. INTRODUCTION**

19 Respondents' Motion to Dismiss (ECF 25) and subsequent notice (ECF 38) confirm
20 that Respondents' custody theory is shifting mid-litigation. That does not moot this habeas
21 case; it underscores why judicial review is necessary.

22 Respondents' Motion begins by expressly premising detention on a final order:

23
24 "Petitioner, Son Hoang Vu, a Vietnamese citizen who is subject to a final removal
25 order, has been lawfully detained by U.S. Immigration and Customs Enforcement
26 ('ICE') in order to facilitate his removal to Vietnam." ECF 25 at 2 (emphasis
added).

27 Respondents then attempt to switch custody statutes based solely on a newly served NTA:
28

1 “Petitioner’s detention, due to the notice to appear in immigration court, is
2 mandatory pursuant to 8 U.S.C. § 1226(c).” ECF 25 at 4.

3 Now, Respondents filed ECF 38 asserting that “both removal orders have been
4 cancelled pursuant to 8 CFR § 1238,” and pivot yet again to a different mandatory-detention
5 statute:

6
7 “Petitioner’s detention, due to the notice to appear in immigration court, is
8 mandatory pursuant to the Immigration and Nationality Act § 235(b). See 8 U.S.C.
9 § 1225(b).” ECF 38 at 2.

10 ECF 38 does not moot the petition because (1) Petitioner remains detained and this
11 Court can grant immediate, effectual relief—release—and (2) the illegal re-detention
12 occurred on January 12, 2026, long before ECF 38’s post hoc “cancellation” theory.
13 Post-filing agency relabeling cannot retroactively legalize unlawful custody or strip this
14 Court of jurisdiction to order release under 28 U.S.C. § 2243.

15
16 **II. RELEVANT RECORD (NTA/FARO/MOOTNESS AND THE JANUARY 12, 2026 ILLEGAL-
17 DETENTION DATE)**

18 1. The January 12, 2026 re-detention and notice sequence. Respondents’ own Return
19 states that OSUP was revoked and that Petitioner was arrested on January 12, 2026 and
20 served with the revocation notice only after arrest. ECF 25 at 3 (citing ECF No. 5-1).
21 Respondents further state that ICE sent the travel-document request packet on January 12,
22 2026. ECF 25 at 3–4.

23
24 2. The February 25, 2026 NTA. Respondents’ declarant states: “On February 25,
25 2026, ERO served Petitioner a notice to appear, placing him in a removal proceeding.” ECF
26 25-1 ¶ 4; see also ECF 38 at 2.

1 3. Respondents' "mandatory detention" toggles. In ECF 25, Respondents asserted
2 mandatory detention under § 1226(c) "due to the notice to appear." ECF 25 at 4. In ECF 38,
3 Respondents now assert mandatory detention under § 1225(b) "due to the notice to appear."
4 ECF 38 at 2.

6 4. The FARO record and date discrepancy—no concession. Exhibit A to ECF 38-1
7 reflects two Form I-851A "Final Administrative Removal Order" documents, dated April
8 28, 1999 and February 2, 2001.¹

10 **Timeline of Respondents' "Statute Toggling" (showing lack of contemporaneous**
11 **authority)**

Date	Government action / filing	Respondents' asserted custody statute	Why it matters
Jan. 12, 2026	OSUP revoked; Petitioner arrested; TDR packet sent	Post-order OSUP revocation (8 C.F.R. § 241.13(i))	Illegal detention began on this date; later "cancellation" cannot retroactively cure unlawful custody.
Feb. 25, 2026	NTA served placing Petitioner in § 240 proceedings	§ 1226(c) "mandatory" (ECF 25)	NTA is a charging document; it does not self-execute vacatur of a DHS FARO.
Mar. 6, 2026	ECF 38 claims FAROs "cancelled"; pivots to § 1225(b); claims mootness	§ 1225(b) "mandatory" (ECF 38)	Post-hoc relabeling + voluntary cessation while detention continues; Court can still grant effectual relief (immediate release).

26 ¹ **Record discrepancy—no concession.** The Court need not resolve, at the motion-to-dismiss stage, whether April 28,
27 1999 or February 2, 2001 is the operative FARO date reflected in the A-file. Petitioner does not concede either date.
28 Under either date, Respondents litigated this case as one involving a "final removal order" (ECF 25 at 2) and detained
Petitioner beginning January 12, 2026 under post-order OSUP-revocation procedures (ECF 25 at 3–4). ECF 38's later
"cancelled" markings (ECF 38-1) do not erase the January 12, 2026 illegal custody or moot this Court's power to order
immediate release while custody continues.

1 Government's shifting custody theory (visual summary):

2 Jan. 12, 2026: domestic OSUP-revocation arrest / § 241.13(i)
3 track

4 |
5 +-- ECF 25: "final removal order" detention + claims
6 § 1226(c) mandatory "due to NTA"

7 |
8 Feb. 25, 2026: NTA served (first time NTA appears in the
9 record)

10 |
11 Mar. 6, 2026: ECF 38: FAROs "cancelled" + pivots to §
12 1225(b) mandatory "due to NTA"

13 v.
14 Habeas injury remains: unlawful custody began Jan. 12 and
15 cannot be cured post hoc.
16

17 III. ARGUMENT

18 **A. ECF 38 does not moot this habeas case because Petitioner remains**
19 **detained and the Court can grant effectual relief—immediate release.**

20 A case is moot only when it is impossible for the court to grant any effectual relief
21 whatever. Here, Petitioner remains in ICE custody. The core remedy sought—**release from**
22 **unlawful detention**—remains available, and 28 U.S.C. § 2243 directs the Court to "dispose
23 of the matter as law and justice require."
24

25 Respondents cite *Abdala v. INS*, 488 F.3d 1061 (9th Cir. 2007), but *Abdala* involved
26 a petitioner who had already been removed, such that the court could no longer grant the
27 requested relief. That is not this case. Petitioner remains detained, and release would
28 immediately redress the ongoing injury. See also *Musaeva v. Cantu*, 2026 U.S. Dist. LEXIS
11601, at *1–*2 (D. Ariz. Jan. 21, 2026) (dismissing habeas as moot after petitioner's
removal); *Eliazar G.C. v. Wofford*, 2025 U.S. Dist. LEXIS 152445, at *2–*3 (N.D. Cal.
Aug. 22, 2025) (same).

1 Recent district court decisions applying Article III mootness in immigration-
2 detention habeas cases confirm that a petition becomes moot only when the detainee has
3 already received the precise relief sought. In *Tijani v. Raycraft*, 2026 U.S. Dist. LEXIS
4 20209, at *4–*5 (W.D. Mich. Jan. 30, 2026), the court dismissed as moot because the
5 detainee had already received a § 1226 bond hearing and did not raise any claim challenging
6 the bond-hearing process or decision. Similarly, in *Herrera-Moreno v. Unknown Party*,
7 2026 U.S. Dist. LEXIS 6543, at *6–*7 (W.D. Mich. Jan. 13, 2026), the court dismissed as
8 moot where the petitioner’s sole theory was detention without a § 1226(a) bond hearing and
9 that hearing was provided. Those cases reinforce (rather than defeat) jurisdiction here:
10 Petitioner challenges unlawful OSUP-revocation custody beginning January 12, 2026 and
11 continuing, and seeks immediate release because ICE lacked authority and failed to comply
12 with mandatory § 241.13(i) procedures; that injury has not been remedied.
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15

16 **B. Even if Respondents could “cancel” a FARO, they cannot moot (or**
17 **retroactively legalize) custody that became unlawful on January 12, 2026;**
18 **ECF 38 is voluntary cessation while detention continues.**

19 Respondents cannot manufacture mootness by changing labels after the challenged
20 custody began. The alleged unlawful act is the January 12, 2026 re-detention following
21 OSUP revocation; Respondents acknowledge that date and their sequencing (arrest first,
22 revocation notice served after). ECF 25 at 3. The Court can still grant relief for that unlawful
23 custody by ordering immediate release and restoring the status quo ante. Even if the FARO
24 is truly cancelled, the Court retains jurisdiction to declare the January 12–February 25
25 detention unlawful to prevent future 'gap period' abuses by Respondents.
26
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1 *Accardi* makes this “post-hoc reclassification” legally intolerable. *United States ex*
2 *rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954). Having arrested Petitioner
3 domestically on January 12, 2026 as a long-term Order of Supervision (“OSUP”) releasee—
4 i.e., under the post-order revocation track—DHS is bound by the mandatory procedures
5 governing that track, including 8 C.F.R. § 241.13(i)’s changed-circumstances determination,
6 meaningful notice, and prompt informal interview requirements. DHS’s attempt to
7 retroactively re-label a domestic arrest as a § 1225(b) “arrival” is a legal fiction that violates
8 the agency’s own mandatory revocation procedures. See *Saqib v. Andrews*, No.
9 1:25-cv-02035-DC-CSK (HC) (E.D. Cal. Feb. 13, 2026) (ordering immediate release and
10 enjoining re-detention absent compliance with § 241.13(i)).
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14 Moreover, voluntary cessation does not moot a live controversy unless Respondents
15 carry the “heavy burden” to show the challenged conduct cannot reasonably be expected to
16 recur. *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 189
17 (2000). Here, Respondents continue to detain Petitioner and reserve the ability to revert to
18 prior detention theories; ECF 38 therefore cannot moot this case.
19

20
21 Even assuming arguendo that Respondents’ post-litigation ‘cancellation’ markings
22 are effective, they do not erase the legal injury of Petitioner’s unlawful detention from
23 January 12 through February 25, 2026. This Court retains jurisdiction to declare that
24 detention unlawful and to order effective relief—including immediate release and
25 record-production requirements—to prevent recurrence of similar ‘gap period’ abuses by
26 Respondents.
27
28

1 Recent OSUP-revocation habeas decisions reject post hoc rationalizations and order
2 immediate release where ICE lacked a contemporaneous factual basis and/or failed to
3 comply with § 241.13(i) notice/interview procedures. See, e.g., *Vo v. Albarran*, No.
4 1:25-cv-01530-JLT-SKO, Doc. 14 at 2–3 (E.D. Cal. Jan. 22, 2026) (granting habeas;
5 requiring showing of significant likelihood of removal under 8 C.F.R. § 241.13(i)(2) and
6 meaningful notice/prompt interview under § 241.13(i)(3)); *Martinez Clavelles v. Larose*,
7 No. 3:26-cv-00752-JLS (VET), Doc. 10 (S.D. Cal. Feb. 27, 2026) (granting habeas in part
8 where ICE failed to provide proper revocation notice/opportunity to contest).
9

10
11 *Gomes v. Hyde* is directly analogous to Respondents’ statute-toggle. There, ICE
12 arrested the petitioner on a warrant citing 8 U.S.C. § 1226 and issued a custody
13 determination under § 1226, but then argued he was “and has always been” detained under §
14 1225(b)(2) to defeat bond. The district court rejected the post-hoc switch as contrary to the
15 statutory scheme and ordered a § 1226(a) bond hearing, refusing to credit the Government’s
16 declaration where it amounted to a legal conclusion contradicted by contemporaneous
17 custody paperwork. *Gomes v. Hyde*, 804 F. Supp. 3d 265, 2025 WL 1869299 (D. Mass. July
18 7, 2025).
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21 *El-Ghazaly v. Chestnut* likewise confirms that post-order OSUP re-detention requires
22 strict compliance with 8 C.F.R. § 241.13(i), and that immediate release is an appropriate
23 remedy when ICE fails to make a contemporaneous changed-circumstances determination
24 or provide meaningful notice and a prompt informal interview. 2025 WL 3485030 (E.D.
25 Cal. Dec. 4, 2025) (granting TRO ordering immediate release and enjoining re-detention
26 absent strict compliance with § 241.13(i)). See also *F.R.R. v. Rodriguez Jr.*, 2025 WL
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28

1 3654266, at *20–22 (W.D. Tex. Dec. 5, 2025) (granting § 2241 habeas, ordering immediate
2 release, and enjoining re-detention without notice and a pre-deprivation hearing where ICE
3 lacked authority to impose § 1225(b)(2) mandatory detention). See also *Saqib v. Andrews*,
4 No. 1:25-cv-02035-DC-CSK (HC) (E.D. Cal. Feb. 13, 2026) (ordering immediate release
5 under prior Order of Supervision conditions and enjoining re-detention absent compliance
6 with 8 C.F.R. § 241.13(i)).
7

8
9 The same principle applies here: ECF 38’s after-the-fact “cancellation” claim—filed
10 March 6, 2026—cannot retroactively cure unlawful custody that began January 12, 2026 or
11 deprive the Court of power to order release.
12

13 *Perez v. Holt*, 2026 U.S. Dist. LEXIS 43172, at *13–*16 (W.D. Okla. Mar. 3, 2026),
14 is instructive and further undermines Respondents’ mootness theory. There, the court
15 recognized that continued ICE detention during a gap period between the termination of one
16 removal proceeding and the initiation of a new proceeding might be “presumptively
17 unreasonable” and could warrant habeas relief, but dismissed as moot because the
18 petitioner’s secondary-injury and voluntary-cessation arguments were underdeveloped and
19 not tethered to his current detention posture. Here, Petitioner does exactly what Perez found
20 missing: he squarely challenges the current detention stemming from the January 12, 2026
21 OSUP revocation, invokes the voluntary-cessation framework, and supplies controlling
22 procedural authorities (including § 241.13(i)) showing why immediate release is the
23 appropriate remedy.
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1 Applying *Perez* to this case underscores why ECF 38 cannot moot the petition: even
2 if a later NTA could ever change custody authority, Petitioner was held for more than six
3 weeks—from January 12 to February 25—without any contemporaneous § 1226(c) or §
4 1225(b) basis. *Perez* observed that even a three-day detention interval after termination
5 could be “presumptively unreasonable” on a developed record. *Perez v. Holt*, 2026 U.S.
6 Dist. LEXIS 43172, at *13–*16 (W.D. Okla. Mar. 3, 2026). A six-week “gap period” is per
7 se unlawful and cannot be cured by later filings or after-the-fact relabeling.

8
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10 **C. A new NTA does not automatically vacate or revoke a prior FARO; DHS**
11 **must take formal action to terminate/reopen/rescind the administrative**
12 **order, and Respondents have not produced a certified, reviewable record of**
13 **such action.**

14 **1. *Riley v. Bondi* confirms a FARO is the operative “final order of removal” upon**
15 **issuance, and later proceedings do not disturb that finality.** In *Riley v. Bondi*, No. 23-
16 1270, slip op. at 3–4, 8–10 (U.S. June 26, 2025), the Supreme Court held that the DHS-
17 issued “final administrative review order” (FARO) under 8 U.S.C. § 1228(b) is the “final
18 order of removal” that triggers the petition-for-review deadline, and that a BIA decision in
19 withholding-only proceedings is not itself a “final order of removal.” *Riley* further
20 explains—consistent with *Nasrallah v. Barr*, 140 S. Ct. 1683 (2020)—that withholding-only
21 adjudication does not revisit or affect the validity of the underlying removal order; it
22 addresses only whether removal may be executed to a particular country.

23
24 The withholding-only regulations likewise presuppose the FARO remains in place.
25 For a person subject to an administrative removal order under INA § 238(b), DHS
26 initiates withholding-only proceedings by filing a Form I-863 (Notice of Referral to
27 Immigration Judge), and the Immigration Judge’s jurisdiction is limited to withholding of
28

1 removal and CAT protection; the IJ may not adjudicate removability, invalidate the
2 FARO, or entertain other forms of relief. See 8 C.F.R. § 1208.2(c)(2).

3
4 **2. The regulations foreclose “automatic vacatur by NTA.”** Proceedings under INA §
5 238(b) (administrative removal) and proceedings under INA § 240 (NTA-initiated removal)
6 are distinct tracks with distinct charging documents and record-keeping. The regulations
7 expressly provide for “conversion” only through termination of the § 238(b) track by the
8 deciding officer, followed by issuance of an NTA where appropriate. See 8 C.F.R. §
9 238.1(d)(2)(iii); 8 C.F.R. § 1238.1(d)(2)(iii) (conversion to § 240 proceedings requires
10 termination of expedited proceedings and then issuance of an NTA). See also *Amhirra v.*
11 *Fitting*, 2025 WL 2606638, at *3 (W.D. Wash. Sept. 9, 2025) (describing an NTA as “the
12 charging document that begins removal proceedings”).
13
14

15 Jurisdictional divergence underscores why an NTA cannot “evaporate” a FARO. An
16 NTA is a “charging document” that vests jurisdiction in the Immigration Court only when it
17 is filed with EOIR. See 8 C.F.R. § 1003.14(a). A FARO, by contrast, is a final agency action
18 issued by DHS under INA § 238(b) (8 U.S.C. § 1228(b)) through a separate administrative
19 track with its own charging document (Form I-851 Notice of Intent) and final order (Form
20 I-851A). See 8 C.F.R. § 238.1(b)(2)(i). Because these instruments arise from different
21 statutory authorities and different agencies, the later issuance of an NTA cannot cancel the
22 preexisting DHS final order absent an explicit, documented termination of the § 238(b) track
23 as required by 8 C.F.R. § 238.1(d)(2)(iii) (termination first, NTA second).
24
25

26 EOIR § 240 Track (NTA)

27 DHS § 238(b) Track (FARO)

Instrument / trigger • Notice to Appear (NTA) (charging document) • Jurisdiction vests only upon filing with EOIR (8 C.F.R. § 1003.14(a))	Instrument / trigger • Form I-851 Notice of Intent (charging document) • Form I-851A Final Administrative Removal Order (FARO)
What it can do • Initiate § 240 proceedings • Does NOT vacate DHS final orders by itself	What it can do • Issue a final order of removal upon administrative issuance • Remains operative unless DHS formally terminates/reopens/rescinds

3. Case law confirms the NTA is not self-executing vacatur. In *Xu v. Garland*, 26 F.4th 100, 103–05 (1st Cir. 2022), DHS separately “cancel[ed]” a FARO and, months later, issued a Notice to Appear for separate removal proceedings while the FARO petition for review remained pending. The key point for this Court is structural: DHS treated cancellation as a distinct agency act—not something that occurred automatically when an NTA was served.

Analogous track-switch decisions confirm that cancellation/termination is an affirmative, documented agency act—not something that occurs automatically upon issuance of a new NTA. For example, in *Lachapel v. Joyce*, 786 F. Supp. 3d 860, 865–68 (S.D.N.Y. 2025), ICE canceled an expedited-removal order and only then issued a new NTA commencing § 240 proceedings; the court treated cancellation and NTA issuance as distinct steps. Likewise, in *Perez v. Holt*, 2026 U.S. Dist. LEXIS 43172, at *4–*6 (W.D.

1 Okla. Mar. 3, 2026), the IJ terminated DHS’s first NTA-initiated proceeding and DHS then
2 issued a second NTA commencing a new proceeding—again reflecting that initiating a new
3 NTA track does not itself erase the prior order or proceeding absent formal termination.
4 Eliazar likewise illustrates that DHS treats rescission of a final administrative removal order
5 as a distinct agency act: DHS “rescinded the final administrative removal order” and only
6 then “issued a Notice to Appear to begin new removal proceedings.” *Eliazar G.C. v.*
7 *Wofford*, 2025 U.S. Dist. LEXIS 152445, at *2–*3 (N.D. Cal. Aug. 22, 2025). *Musaeva*
8 reflects the same sequencing in the expedited-removal context (cancellation of the expedited
9 order, release, then NTA). *Musaeva v. Cantu*, 2026 U.S. Dist. LEXIS 11601, at *1–*2 (D.
10 Ariz. Jan. 21, 2026).

13
14 Additional circuits confirm that the § 240 NTA track and the § 238(b)/§ 1228(b)
15 administrative-removal track do not “merge,” and that an NTA does not revoke a FARO
16 absent an express termination. In *Aguilar-Aguilar v. Napolitano*, DHS first commenced §
17 240 proceedings with an NTA, then successfully moved to dismiss the NTA as
18 improvidently issued so it could proceed under § 1228(b); DHS then served a Notice of
19 Intent (the charging document in § 1228(b) proceedings) and issued a FARO, which the
20 Tenth Circuit treated as a “final order of removal.” 700 F.3d 1238, 1240–42 (10th Cir.
21 2012). Likewise, in *Doobay v. Bondi* (unpublished), the noncitizen requested issuance of an
22 NTA, but DHS instead issued—and then superseded—a FARO under § 1228(b); the request
23 for an NTA did not affect FARO finality. 2025 U.S. App. LEXIS 19493, at *2–3 (6th Cir.
24 Aug. 1, 2025).

1 **4. Respondents’ own conduct confirms there is no automatic vacatur.** If an NTA
2 automatically extinguished the FARO, Respondents would not have filed “cancelled”
3 FARO copies and invoked 8 C.F.R. part 1238 in ECF 38. The very existence of ECF 38
4 proves the Government understands that a later NTA does not itself revoke a FARO.
5 Accordingly, Respondents must be required to produce (at minimum) a certified copy of the
6 operative FARO and a certified, dated agency action that formally
7 terminated/reopened/rescinded it, together with the legal authority relied upon and proof of
8 service. Absent that record, the Court should reject Respondents’ implied “automatic
9 vacatur” premise and deny dismissal.
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11

12 **D. Respondents’ “cancellation pursuant to 8 C.F.R. part 1238” is not a**
13 **coherent mootness basis: Part 1238 governs administrative-removal**
14 **procedures, and Respondents have not shown any certified, reviewable**
15 **cancellation decision or compliance with basic notice-and-opportunity-to-**
16 **respond protections.**

17 ECF 38 provides only a conclusory assertion that “both removal orders have been
18 cancelled pursuant to 8 CFR § 1238.” ECF 38 at 2. But Part 1238 is a procedural rulebook
19 for administrative removal; it does not create a self-executing mootness doctrine. Where the
20 Government relies on a post-litigation agency act to defeat habeas relief while continuing to
21 deprive liberty, it must provide a certified, reviewable record of the agency decision
22 (decisionmaker, authority, effective date, and service). See *Xu v. Garland*, 26 F.4th 100,
23 103–05 (1st Cir. 2022); *Aguilar-Aguilar v. Napolitano*, 700 F.3d 1238, 1240–42 (10th Cir.
24 2012).

25
26 Courts routinely refuse to credit after-the-fact legal conclusions or label-switching in
27 custody litigation and instead require contemporaneous record support. See *Gomes v. Hyde*,
28

1 804 F. Supp. 3d 265, 2025 WL 1869299 (D. Mass. July 7, 2025) (declining to credit a
2 declaration's statutory-label assertion contradicted by custody documents). And where ICE
3 alters liberty status under post-order supervision/re-detention rules, *Accardi* requires strict
4 adherence to DHS's own mandatory notice-and-opportunity procedures. DHS's attempt to
5 retroactively re-label a domestic arrest as a § 1225(b) "arrival" is a legal fiction that violates
6 the agency's own mandatory revocation procedures in 8 C.F.R. § 241.13(i). See *El-Ghazaly*
7 *v. Chestnut*, 2025 WL 3485030 (E.D. Cal. Dec. 4, 2025) (ordering immediate release and
8 enjoining re-detention absent strict compliance with § 241.13(i)); *Saqib v. Andrews*, No.
9 1:25-cv-02035-DC-CSK (HC), Order at 2 (E.D. Cal. Feb. 13, 2026) (same). Respondents'
10 unsupported "cancellation" claim cannot carry their heavy mootness burden while detention
11 continues.
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15 **E. Respondents have not carried their burden to show § 1225(b) applies; the Court should reject this latest statute-toggle and order immediate release.**

16 Respondents' § 1225(b) pivot appears aimed at importing the recent "no-bond" line
17 of authority associated with *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which
18 held that Immigration Judges lack authority to grant bond to certain noncitizens who are
19 "applicants for admission" because they are present in the United States without admission.
20 But *Yajure Hurtado* is a bond-jurisdiction decision in a pending § 240 case; it does not
21 authorize DHS to retroactively reclassify a post-order OSUP-revocation detention
22 (beginning Jan. 12, 2026) as § 1225(b) mandatory detention in order to avoid § 241.13(i)
23 compliance and moot habeas review. Nor does it supply the missing predicate record
24 Respondents refuse to provide here—i.e., a contemporaneous examining-officer
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1 determination and custody paperwork placing Petitioner in § 1225(b) detention at the time
2 custody was imposed.

3 *Yajure Hurtado* itself underscores why Respondents' post-hoc "arrival" theory does
4 not fit here. There, the respondent was a recent entrant placed in ongoing § 240 proceedings
5 and sought an Immigration-Judge bond hearing; the BIA's holding addressed EOIR's bond
6 jurisdiction in that posture. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 216–18, 225–
7 29 (BIA 2025). Petitioner is different: he is a long-term OSUP releasee arrested
8 domestically on January 12, 2026 under the OSUP-revocation track. Section 1225(b)(2)(A)
9 by its terms applies only "if the examining immigration officer determines" that an alien
10 "seeking admission" is not clearly entitled to be admitted—a contemporaneous
11 examining-officer determination Respondents do not and cannot produce for this January 12
12 arrest. District courts continue to enforce that domestic-arrest / border-inspection distinction
13 notwithstanding *Hurtado*. See *Singh v. Oddo*, No. 3:25-cv-00429-CBB, Mem. Op. at 7–10
14 (W.D. Pa. Jan. 9, 2026) (holding § 1226(a) governs because "seeking admission" means
15 actively attempting to enter at a port of entry); *F.R.R. v. Rodriguez Jr.*, 2025 WL 3654266,
16 at *17–21 (W.D. Tex. Dec. 5, 2025) (same); *Buenrostro-Mendez v. Bondi*, No. 25-20496,
17 slip op. at 23–26 (5th Cir. Feb. 6, 2026) (Oldham, J., dissenting) (explaining "seeking
18 admission" means what it sounds like and emphasizing the statute's "examining officer"
19 predicate).

20 Even where courts have endorsed DHS's expanded reading of § 1225(b)(2)(A), the
21 posture is materially different: those cases involve individuals encountered and detained
22 during ongoing § 1229a proceedings based on inadmissibility as noncitizens "present ...
23 without being admitted or paroled." See *Buenrostro-Mendez v. Bondi*, No. 25-20496 c/w

1 25-40701, slip op. at 6–10 (5th Cir. Feb. 6, 2026) (reversing bond-hearing grants and
2 applying § 1225(b)(2)(A)). Whatever the merits of that Fifth Circuit approach, it is not
3 binding in this Circuit and it does not address OSUP-revocation re-detention under 8 C.F.R.
4 § 241.13(i), which is the source of the illegality here. Respondents cannot use a post-hoc
5 “no-bond” theory to erase the January 12, 2026 due-process injury or to evade the Accardi
6 principle requiring strict adherence to DHS’s own revocation procedures.
7

8 Critically, Respondents here did not take Petitioner into custody under § 1225(b) at
9 the time of re-detention; they arrested him as an OSUP releasee on January 12, 2026 and
10 invoked post-order supervision revocation procedures. Having chosen (and litigated) that
11 custody posture, Respondents cannot later manufacture § 1225(b) detention years after entry
12 through litigation-driven relabeling. See *F.R.R.*, 2025 WL 3654266, at *17–21 (requiring
13 “seeking admission” and an examining-officer determination) and *Saqib*, No.
14 1:25-cv-02035-DC-CSK (HC), Order at 2 (E.D. Cal. Feb. 13, 2026) (ordering immediate
15 release and enjoining re-detention absent compliance with 8 C.F.R. § 241.13(i)).
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18 Respondents’ ECF 38 pivot invokes INA § 235(b) / 8 U.S.C. § 1225(b) solely “due to
19 the notice to appear.” ECF 38 at 2. That is not a statutory predicate. Section 1225(b) applies
20 to applicants for admission and certain “arriving alien” contexts; it is not a catch-all
21 detention statute for a long-term OSUP releasee re-arrested to execute a prior order.
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24 The record is devoid of any Form I-862 (NTA) or Form I-860 (expedited removal
25 order) reflecting a contemporaneous § 1225(b) determination on January 12. In the absence
26 of an examining officer’s signed determination from that date—and absent any custody
27 paperwork placing Petitioner in § 1225(b) detention at the time custody was imposed—the
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1 Government's current citation to § 1225(b) is merely a litigation position, not a lawful
2 custody basis.

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4 Courts addressing detention of individuals apprehended within the United States have
5 repeatedly rejected the Government's effort to recharacterize such detainees as subject to
6 mandatory § 1225(b)(2)(A) detention. See, e.g., *Banchon v. Francis*, 2026 U.S. Dist. LEXIS
7 3743, at *3–*4 (S.D.N.Y. Jan. 8, 2026) (holding § 1226(a), not § 1225(b)(2)(A), governs
8 detention of individuals arrested within the United States under materially similar
9 circumstances); see also *Perez v. Holt*, 2026 U.S. Dist. LEXIS 43172, at *3–*4 (W.D. Okla.
10 Mar. 3, 2026) (joining the majority view that § 1226—not § 1225(b)(2)(A)—governs and
11 rejecting the Government's statutory interpretation). Respondents' unexplained shift to §
12 1225(b) is therefore not only unsupported by any predicate "applicant for admission"
13 determination, but also contrary to the prevailing persuasive authority. Accord *F.R.R. v.*
14 *Rodriguez Jr.*, 2025 WL 3654266, at *17–21 (W.D. Tex. Dec. 5, 2025) (holding §
15 1225(b)(2)(A) requires a person "seeking admission" and an examining-officer
16 determination, and is inapplicable to a noncitizen already present in the United States—
17 therefore detention falls under § 1226).

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22 At a minimum, Respondents must (1) identify the precise § 1225(b) subsection
23 invoked and (2) produce the predicate agency determinations that allegedly trigger it. Their
24 conclusory citation to § 1225(b), without record support, cannot justify continued
25 mandatory detention—especially where Respondents previously litigated this case as one
26 involving a final order and § 241.13(i) OSUP-revocation procedures. ECF 25 at 2–4; ECF
27 38 at 2.

1 **IV. CONCLUSION AND REQUESTED RELIEF**

2 For the foregoing reasons, Petitioner respectfully requests that the Court:

3 1. **DENY** Federal Respondents' Return Memorandum and Motion to Dismiss (ECF 25);

4 2. **REJECT** Respondents' mootness argument in ECF 38;

5 3. **HOLD** that the February 25, 2026 NTA did not automatically vacate or revoke any
6 preexisting FARO;

7 4. **ORDER** Petitioner's immediate release from ICE custody under the prior Order of
8 Supervision conditions (or other appropriate supervision conditions set by the Court); and
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10 5. **Alternatively**, order Respondents within 48–72 hours to file a certified, reviewable
11 custody-basis record (including the precise statutory subsection invoked, the predicate
12 agency determinations—including any contemporaneous Record of
13 Determination/Inadmissibility (Form I-860) or equivalent document that corresponds to the
14 January 12 arrest, and signed by an examining immigration officer on January 12, 2026
15 invoking § 1225(b)—, and any formal FARO termination/reopening/rescission instrument),
16 and order release pending that production and prompt merits resolution.
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20 DATED: March 9, 2026.

Respectfully submitted,

21 /s/ Daniel M. Huynh
22 Daniel M. Huynh (SBN 036779)
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4 **CERTIFICATE OF SERVICE**

5 I certify that on March 9, 2026, I caused the foregoing to be filed electronically with the
6 Clerk of Court using the CM/ECF system, which will serve all counsel of record.

7 DATED: March 9, 2026.

8 /s/ Daniel M. Huynh
9 Daniel M. Huynh
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