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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DIEGO ANÍBAL ALIAGA PEÑA,

Petitioner,

v.

SIXTO MARRERO, et al.,

Respondents.

Case No.: 26-cv-3279-JLS-MSB

RESPONSE TO PETITION

I. INTRODUCTION

Petitioner has filed a habeas petition under 28 U.S.C. § 2241, requesting that the Court order he be released or provided an individualized bond hearing. The government has carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for U.S. Immigration and Customs Enforcement's (ICE) detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a).

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Peru, who entered the United States without inspection or admission on or about November 4, 2023, at or near Nogales, Arizona. *See* Exh. 1 at 2 (Notice to Appear).[1] Petitioner was apprehended by officers with the Department of Homeland Security, and released under an Order of Release on Recognizance. Exh. 2 (OREC order). A condition of that release was compliance with local, State, and Federal laws. *Id.* On November 4, 2023, ICE served Petitioner with a Notice to Appear (NTA), charging him with inadmissibility under removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) and filed it with the Immigration Court. Exh. 1.

Petitioner was arrested in 2025 and charged with first and second degree murder, along with inflicting injury on cohabitant resulting in a traumatic condition. ECF No. 1 at ¶¶ 6-8. Although Petitioner was acquitted of these charges, Petitioner was convicted of battery to cohabitant, in violation of California Penal Code § 243(e)(1) and sentenced to 180 days in jail.[2] *Id.* at ¶ 9. A criminal protective order was issued in connection with the

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[1] The attached exhibits are true copies, with few redactions of private information, of documents obtained from ICE counsel.

[2] The government does not have sufficient information at this time to assess whether the conduct underlying this conviction subjects Petitioner to mandatory detention pursuant to Title 8, United States Code Section 1226(c)(1)(E)(ii). Should Respondents receive more information regarding the conduct underlying Petitioner's domestic battery conviction prior to the Court's issuance of a decision, Respondents respectfully request permission to supplement the record.

case. ECF No. 1-2 at 17. Petitioner was arrested by immigration authorities on February 25, 2026 after being released from San Bernardino County Sheriff's Department custody. Exh. 3 (I-213).

III. ARGUMENT

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b)(2). However, the government acknowledges that this Court, and Courts in this District, have repeatedly reached the opposite conclusion under the same and/or similar facts. *See, e.g.*, *Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL 3251580 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13, 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 225); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025).

The government acknowledges that this Court's prior decisions will control the result here if the Court adheres to its prior decisions, as the facts are not materially

distinguishable for purposes of the Court's decision, and does not oppose an order directing a bond hearing at this time.[3]

Respondents do oppose an order directing release in this case. Although Petitioner was granted OREC after apprehension in 2023, Petitioner was re-detained after being arrested, and subsequently convicted of a domestic assault. Thus, these circumstances are factually distinguishable from those in which an individual previously granted OREC or parole was re-detained absent changes in circumstance. Accordingly, the Court should decline to order Petitioner's release in these circumstances.

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request the Court to deny this habeas petition.

DATED: June 4, 2026

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s/ Laura C. Sambataro
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[3] Considering heavy caseloads and staffing levels, Respondents respectfully request that such order provide the government 14 days from issuance to hold such bond hearing.