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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 **SUPPLEMENTAL BRIEFING**

Pursuant to the Court's June 15, 2026 order for supplemental briefing, Respondent's hereby file this supplemental response addressing: "(1) why release, given Petitioner's conviction, may not be appropriate in this case, and (2) if release is not is not appropriate, under which provision--§ 1226(a) or § 1225(b)(2)—granting a bond hearing would be proper." ECF No. 9, at 2.

A. <u>Given the Circumstances Surrounding Petitioner's Conviction, Release is Not Appropriate</u>

Petitioner was taken into custody by immigration authorities after being convicted and sentenced for a domestic violence incident involving a prior romantic partner. The

government obtained police reports related to that incident after the deadline for filing a response to this petition had passed, and now submits a redacted copy as Exhibit 1. An immigration detainer was placed on Petitioner while Petitioner was detained by the San Bernardino County Sheriff's Office. Exh. 2. However, as previously submitted under the return to the habeas petition, the detainer was not honored, and Petitioner was released from state custody, despite the active detainer, and without notice to immigration authorities. ECF No. 7-1 at 11.

Given the circumstances, this case is distinguishable from those in which courts have found a procedural due process right to pre-deprivation hearing under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Courts have used the three factor test under *Mathews* in similar, but distinguishable cases where immigration authorities have revoked previous grants of release. *See Tulyakov v. LaRose*, No. 26-CV-01695, 2026 WL 981218 (S.D. Cal. April 13, 2026). The factors are: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathew*, 424 U.S. at 335.

Here, an analysis of those factors counsels against outright release. Although Petitioner "acquired a protected interest in being free from imprisonment once he was paroled into the country," Petitioner did not comply with those parole conditions in being arrested for murder, and subsequently convicted of a domestic violence offense. *Contra Tulyakov*, 2026 WL 981218 at *2 (finding that petitioner had a protectable expectation of his due process rights where petitioner was granted conditional parole and "complied with his reporting conditions for the year he lived in the country.").

Further, the second factor, the risk of an erroneous deprivation of Petitioner's liberty does not necessitate a pre-deprivation hearing here where Petitioner did not comply with

the law and his release conditions. *See, e.g. Martinez Hernandez v. Andrews*, No. 25-cv-1035 JLT HBK, 2025 WL 2495767, at *12 (E.D. Cal. Aug. 28, 2025) ("Here, in contrast, [p]etitioner's ATD records indicate numerous violations. . . . If Respondent's view of the facts is correct, it is at least arguable that providing Petitioner with notice and a pre-deprivation hearing would have been impracticable and/or would have motivated his flight."); *see also Zinermon v. Burch*, 494 U.S. 113, 132 (1990) ("in situations where a predeprivation hearing is unduly burdensome in proportion to the liberty interest at stake . . . or where the State is truly unable to anticipate and prevent a random deprivation of a liberty interest, postdeprivation remedies might satisfy due process.").

Finally, the Government has a strong interest here, where Petitioner not only failed to comply with his conditions under OREC, but he also admitted committing violent acts, and was convicted of assaulting his former romantic partner. Exh. 1. These circumstances place Petitioner's case outside the realm of cases in which courts in this district have ordered outright release in the face of an OREC revocation for compliant petitioners.

B. <u>A Bond Hearing Should Provided Under § 1226</u>

As to the Court's second request, Respondents' position is that the bond hearing should be held under § 1226(a) but does not oppose having the burden placed on the government at the bond hearing. Petitioner was initially released under an order of own recognizance under § 1226(a). "Courts have recognized that typically, the term "released on their own recognizance" refers to conditional parole" and thus, treated these petitioners as being released pursuant to § 1226(a). *Aranda Martinez v. Warden, Otay Mesa Det. Ctr.*, No. 26-CV-2905-JES-AHG, 2026 WL 1471899, at *2 (S.D. Cal. May 26, 2026); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the INS used the phrase 'released on recognizance' as another name for 'conditional parole' under § 1226(a)").

The Ninth Circuit has confirmed that at a bond hearing under 8 U.S.C. § 1226(a), the burden is on the detainee to demonstrate by a preponderance of the evidence that he is

not a flight risk or danger to the community. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022); *see also Dos Santos v. Becerra*, No. 26-cv-01423-GPC-VET, 2026 WL 800201 (S.D. Cal. Mar. 23, 2026). However, Respondents acknowledge that courts have held that where the government initiates re-detention of an individual previously released from immigration custody after their initial detention, the government should bear the burden of proof by clear and convincing evidence.[1] *See Martinez Hernandez*, 2025 WL 2495767 at *14 ("the immigrant's initial release reflected a determination by the government that the noncitizen is not a danger to the community or a flight risk. Since it is the government that initiate re-detention, it follows that the government should be required to bear the burden of providing a justification for the re-detention.").

For the reasons stated herein, Respondents respectfully request the Court to reject outright release.

DATED: June 18, 2026

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s/ Laura C. Sambataro
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[1] The Court's order asks Respondent to address whether a bond hearing should be held under § 1226 or § 1225(b)2). As a practical matter, bond hearings are not held under § 1225. Rather, individuals who are detained under § 1225 receive a bond hearing where a district court has found the detention to be unconstitutionally prolonged and orders a bond hearing. That bond hearing is held pursuant to the court's order, not under § 1225.