ADAM GORDON
United States Attorney
HUNTER V. NORTON
Assistant United States Attorney
Washington, D.C. Bar No. 1780736
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8592
Email: Hunter.Norton2@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOSE GARRIDO NIETO,

Petitioner,

v.

CHRISTOPHER J. LaROSE, Warden of the Otay Mesa Detention Center; *et al.*,

Respondents.

Case No.: 26-cv-03771-JO-AHG

RESPONSE TO PETITION

Petitioner has filed a habeas petition under 28 U.S.C. § 2241. 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). While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated response to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter.

United States Border Patrol (USBP) first became aware of Petitioner, a citizen and national of Mexico, through alien smuggling investigations in the Campo Border Patrol Station's area of responsibility. *See* Exhibit 1 (Form I-213) at 3. Petitioner was identified as the smuggling coordinator in multiple alien smuggling events based on material witness interviews. *Id.* On June 2, 2026, USBP arrested Petitioner for being unlawfully present in the United States and a Notice to Appear was filed. *Id.* at 4; Exhibit 2 (Notice to Appear).

In an application for cancellation of removal filed after he was arrested, Petitioner represented that he has unlawfully entered the United States two times. *See* Exhibit 4 (Form EOIR-42B) at 2. However, Petitioner has been arrested near the border after unlawfully entering the United States four times prior to his most recent unlawful entry. Exhibit 1 at 4. The first four times he unlawfully entered the United States, Petitioner was allowed to voluntarily return to Mexico in lieu of facing criminal prosecution under 8 U.S.C. § 1325. Petitioner's next hearing before the immigration judge is on July 9, 2026. *See* Exhibit 3 (Notice of Hearing) at 1.

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 on that basis the government does not oppose the petition and defers to the Court on the appropriate relief.[1]

DATED: July 8, 2026

ADAM GORDON
United States Attorney

s/ Hunter Norton
HUNTER V. NORTON
Assistant United States Attorney

[1] To the extent the Court issues an order directing a bond hearing under 1226(a), considering heavy caseloads and staffing levels, Respondents respectfully request that such order provide the government 14 days from issuance to hold such bond hearing. Respondents also respectfully note that 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).