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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KEVIN JOSE CHAVARRIA RODRIGUEZ,

Petitioner,

v.

JEREMY CASEY, et al.,

Respondents.

Case No.: 3:26-cv-04066-AGS-DEB

RESPONSE TO PETITION

Petitioner has filed a habeas petition under 28 U.S.C. § 2241. ECF No. 1. The petition asserts that Petitioner entered the United States without inspection in 2021. ECF 1, ¶ 17. The Petition further asserts that Petitioner was previously detained during the pendency of removal proceedings and was granted parole on November 3, 2021. ECF 1, ¶ 18, Ex. 2, Page ID 20. Petitioner alleges that his request for asylum was denied by an Immigration Judge in December 2024, that he appealed the denial to the Board of Immigration Appeals, and that his appeal is pending. ECF 1, ¶¶ 20-21. Petitioner asserts

he was again detained on or about May 29, 2026. ECF 1, ¶ 21. Petitioner seeks release from detention or a bond hearing under legal theories including that his detention is subject to the discretionary detention provisions of 8 U.S.C. § 1226(a), violation of substantive and procedural Due Process under the Fifth Amendment to the United States Constitution, and violation of the Administrative Procedure Act (APA). ECF 1, Page ID 9-12.

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. 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.

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b) under the allegations asserted in the Petition. *See Jennings v. Rodriguez*, 583 U.S. 281, 287-8, 302 (2018) (discussing mandatory detention of applicants for admission who fall under either subsection (1) or (2) of § 1225(b) until completion of removal proceedings). 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*, 812 F. Supp.3d 1073 (S.D. Cal. 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); *Jasbir v. Warden*, 26-cv-579-JES-BJW, 2026 WL 353354 (S.D. Cal. February 9, 2026).

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,[1] and on that basis the government does not oppose the petition and defers to the Court on the appropriate relief.[2]

DATED: July 22, 2026

Respectfully submitted

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s/Roger G. Wright
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Attorneys for Respondents

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[1] If the Court decides to resolve the petition on statutory or regulatory application grounds, the Court should decline to address the Petition's claims sounding in violation of substantive and procedural due process, and violation of the APA. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

[2] Should the Court decide to issue 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).