ADAM GORDON
United States Attorney
CAMILLE SAVEDRA
Assistant U.S. Attorney
California State Bar No. 336490
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-5084
Email: camille.savedra@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JESUS ENRIQUE ABREU FERRER,

Petitioner,

v.

JEREMY CASEY, Warden. Imperial Regional Detention Center, Calexico, California, *et al*,

Respondents.

Case No.: 26-cv-04103-GPC-MSB

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.

Respondents concede Petitioner was previously released from immigration custody on January 3, 2024 on conditional parole issued under 8 U.S.C. § 1226(a). *See* Exhibit 1 (Order of Release on Recognizance). However, Petitioner's release order was conditioned on Petitioner not violating any local, state or federal laws or ordinances, among other conditions. *Id.* That same year, on September 14, 2024, Petitioner was arrested in New York City for second-degree assault and child endangerment. *See* Exhibit 2 (Form I-213). A couple months later Petitioner was arrested in New Jersey for receipt of stolen property and resisting arrest. *Id.* On May 16, 2026, Petitioner was arrested in New York City for felony criminal possession of a controlled substance and minor vehicle-related violations. *Id.* To the government's knowledge, all the foregoing charges against Petitioner are pending resolution. On May 17, 2026, Petitioner was convicted of disorderly conduct in Queens County Criminal Court in New York. *Id.* Petitioner was subsequently released to immigration authorities pursuant to an administrative warrant issued on June 4, 2025. *See* Exhibit 3.

Given the circumstances, Petitioner's 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 Petitioner's outright release. Although Petitioner "acquired a protected interest in being free from imprisonment once he was paroled into the country," Petitioner almost immediately did not comply with those parole conditions upon his arrest for receipt of stolen property and resisting arrest. Petitioner's criminal conduct continued as recent as this year, with an arrest for felony possession of a controlled substance and a conviction for disorderly conduct. *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 was arrested for offenses involving

violence and disruptive conduct. *See* Exhibit 2. 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.

To the extent Petitioner requests immediate release because of a lack of an administrative warrant, Respondents respectfully oppose. As previously stated, Petitioner was issued an administrative warrant on June 4, 2026. Exhibit 3. Respondents further note that 8 U.S.C. § 1357(a)(2) authorizes warrantless arrests and 8 C.F.R. § 287.3(d) provides the government 48 hours to issue a warrant if it determines that the noncitizen will remain custody. *See Garcia-Juarez v. Blanche*, No. 26-cv-3007-LL-DEB, ECF No. 18 (S.D. Cal. June 30, 2026).

In conclusion, it is Respondents' position that Petitioner is subject to mandatory detention under § 1225(b)(2). Respondents acknowledge 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).

Respondents acknowledge that this Court's prior decisions will control the result here if the Court adheres to its prior decisions. However, to the extent the Court is persuaded by the reasons stated herein, Respondents' respectfully request the Court order a bond hearing pursuant to 8 U.S.C. § 1226(a)[1] in lieu of ordering Petitioner's outright release.

DATED: July 24, 2026

ADAM GORDON
United States Attorney

s/ Camille Savedra
CAMILLE SAVEDRA
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).