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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 LUIS GILBERTO LUYO CHAVEZ

12 Petitioner,

13 vs.

14 GURMEET SINGH, Warden of Mesa
15 Verde Detention Center, et al.,

16 Respondents.

Case No. 1:25-cv-01727-DAD-CSK

PETITIONER'S SUPPLEMENTAL
RESPONSE TO RESPONDENTS'
SUPPLEMENTAL ANSWERS TO
PETITION FOR WRIT OF HABEAS
CORPUS

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18 In support of their continued violations of Petitioner's statutory and
19 constitutional rights, Respondents have provided this court with duplicate filings of
20 Petitioner's Form I-213, Record of Deportable/Inadmissible Alien ("Form I-213"),
21 (Resp'ts Return, Dkt. No. 7-1; Resp'ts Suppl. Answer, Dckt. No. 11-1), and an ATD
22 ISAP Violations Report ("ATD ISAP Report"), (Resp'ts Return, Dkt. No. 7-2;
23 Resp'ts Suppl. Answer, Dckt. No. 11-2). Additionally, following a second order from
24 the Court for evidentiary documents, (Ct. Order, Jan. 27, 2026; Dckt. No. 12),
25 Respondents submitted Petitioner's DHS Form-862, Notice to Appear ("NTA"),
26 (Resp'ts Second Suppl. Answer, Dkt. No. 13-1), Form I-220A, Order of Release on
27 Recognizance ("Release Order"), (Resp'ts Second Suppl. Answer, Dkt. No. 13-2),
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1 and DHS Form I-286, Notice of Custody Determination (“Custody Notice”), (Resp’ts
2 Second Suppl. Answer, Dkt. No. 13-3).

3 “As numerous courts have observed, the initial decision to pursue petitioner’s
4 detention under § 1226(a) precludes the government from later ‘switch[ing] tracks’ to
5 subject him to mandatory detention under § 1225(b)(2).”
6 *Gutierrez v. Chesnut*, No. 1:25-cv-01515-DAD-AC (HC), 2025 LX 544215 (E.D.
7 Cal. Dec. 8, 2025) (quoting *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025
8 U.S. Dist. LEXIS 179594, at *8 (N.D. Cal. Sept. 12, 2025)). Because all of
9 Respondent’s “evidence” indicate the Department chose to pursue Petitioner’s
10 detention under § 1226(a), Respondents have failed to provide any basis—whether
11 legal or factual—for their opposition to Petitioner’s statutory and constitutional
12 claims.

13 **I. Respondent’s Evidence Indicates Petitioner is Subject to § 1226(a)**

14 “Proceedings are initiated under 8 U.S.C. § 1229(a) [INA § 240], also known
15 as ‘full removal,’ by filing a Notice to Appear with the Immigration Court.” *Salcedo*
16 *Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 U.S. Dist. LEXIS 179594, 2025 WL
17 2637503 (N.D. Cal. Sept 12, 2025) (citing *Matter of E-R-M*, 25 I. & N. Dec. 520,
18 520 (BIA 2011)). Moreover, “[w]hen a person is apprehended under § 1226(a), an
19 ICE officer makes the initial custody determination” and will grant release if the
20 noncitizen “demonstrate[s] to the satisfaction of the officer that such release would
21 not pose a danger to property or persons, and that the [noncitizen] is likely to appear
22 for any future proceeding.” *Diaz v. Garland*, 53 F.4th at 1196 (citing 8 C.F.R. §
23 236.1(c)(8)).

24 **A. Respondents’ Evidence Shows the Department Chose to Pursue**
25 **Petitioner’s Custody Under § 1226(a).**

26 Petitioner’s Form I-213 notes he is administratively charged under INA §
27 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an “alien present without being
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1 admitted or paroled.” (Resp’ts Return, Dkt. No. 7-1; Resp’ts Suppl. Answer, Dckt.
2 No. 11-1). This same charge is listed in Petitioner’s NTA, (Resp’ts Second Suppl.
3 Answer, Dkt. No. 13-1), which notably states that Petitioner is in removal proceedings
4 under INA § 240, 8 U.S.C. § 1229(a), rather than INA § 235, 8 U.S.C. § 1225. In
5 fact, no part of Petitioner’s Form I-213 or NTA make reference to INA § 235, 8 U.S.C.
6 § 1225, or its mandatory detention provisions, nor do they contain any indication that
7 Petitioner received a determination of credible fear of persecution following a credible
8 fear interview such that he must remain detained pending the Immigration Court’s
9 adjudication of his asylum claim. 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer
10 determines at the time of the interview that an alien has a credible fear of persecution
11 (within the meaning of clause (v)), the alien shall be detained for further consideration
12 of the application for asylum.”).

13 Nonetheless, Respondents argue that Petitioner’s initial release “is best
14 understood as an exercise of [§ 1182(d)(5)(A)] DHS discretion,” and that Petitioner’s
15 subsequent re-arrest took place “subject to that same grant of discretion.” (Resp’ts’
16 Return 7, Dkt. No. 7). On this theory, Respondents attempt to explain away
17 Petitioner’s warrantless re-arrest since § 1182(d)(5)(A) does not require issuance of a
18 warrant. (*Id.*) Yet both Petitioner’s Release Order, (Resp’ts Second Suppl. Answer,
19 Dkt. No. 13-2), and Custody Notice, (Resp’ts Second Suppl. Answer, Dkt. No. 13-3),
20 expressly state Petitioner was granted conditional parole pursuant to § 1226(a).
21 Neither document, (*id.*), which Respondents provided only after failing to comply
22 with the Court’s first order requiring their submission, (Ct. Order, Jan. 16, 2026;
23 Dckt. No. 12), mentions nor otherwise references parole permitted “for urgent
24 humanitarian reasons or significant public benefit” under § 1182(d)(5)(A).

25 Significantly, the Court afforded Respondents ample opportunity to
26 supplement their response to Petitioner’s statutory and constitutional claims. But
27 rather than address—let alone explain—why their evidence contradicts their assertion
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1 that Petitioner was initially arrested, released, and subsequently rearrested under §
2 1182(d)(5)(A), Respondents instead “rely on the arguments and attachments
3 articulated in their earlier briefs and maintain that *Defendant’s* detention is lawful.”
4 (Resp’ts Second Suppl. Answer, Dkt. No. 13 (citing Resp’ts Return, Dkt. No. 7)
5 (emphasis added)). Particularly telling is Respondents’ erroneous and prejudicial use
6 of the term “Defendant” to describe Petitioner, who is 1) the plaintiff in the instant
7 action against the Government and 2) a respondent to civil administrative charges
8 brought in immigration court. Even if Respondents did not intend to prejudice
9 Petitioner by describing him accordingly, Respondent’s use of the term “Defendant”
10 nevertheless betrays the Government’s impermissibly punitive attitude toward
11 Petitioner’s current detention. *See Zadvydas*, 533 U.S. at 690 (emphasizing that
12 removal proceedings are civil in nature and thus non-punitive). With this in mind,
13 Respondents’ footnote explanation, (Resp’ts’ Return 7, Dkt. No. 7), that evidence of
14 Petitioner’s release under § 1226(a) is “legal error” alone constitutes arbitrary and
15 capricious agency action under 5 U.S.C. § 706(2)(A) because such explanation runs
16 counter to the evidence Respondents have since submitted to this Court, *Motor*
17 *Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Nat’l*
18 *Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007).

19 **B. The ATD ISAP Report Evidences Only Petitioner’s Custody**
20 **Classification Under § 1226(a).**

21 As a matter of fact, Respondents claim Petitioner incurred eleven violations of
22 the ATD ISAP program. (Resp’ts Return, Dkt. No. 7-1). Yet Respondent’s purported
23 evidence contains notable inconsistencies. (*See* Resp’ts Return, Dkt. No. 7-2; Resp’ts
24 Suppl. Answer, Dckt. No. 11-2). The ATD ISAP Report lists only ten purported
25 violations since the “Violation” column indicates that the “Event type display” that
26 took place on February 18, 2025, was *not* a violation. (*Id.*). Also, the ATD ISAP
27 Report curiously fails to note the supposed September 29, 2025, violation that
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1 ultimately led to Petitioner’s re-arrest. (Pet. ¶¶ 25-28, Dkt. No. 1). This is especially
2 significant given that the report was run on October 2, 2025, the date of the re-arrest
3 and three days following the alleged violation. The absence of such a consequential
4 violation calls into question the accuracy of the recorded, alleged violations. Further
5 weakening the reliability of the report is the fact that it cannot be fairly read without
6 benefit of the “OREC G-56,” which detail the means by which Petitioner was ordered
7 to comply with his reporting requirement as stated in his Release Order, (Resp’ts
8 Second Suppl. Answer, Dkt. No. 13-2), and which Respondents failed to provide.
9 Taken together, the inconsistencies noted hereinabove show that the ATD ISAP
10 Report and its table listing Petitioner’s purported violations is quite simply that and
11 only that—a list of purported violations without an evidentiary basis.

12 In fact, the ATD ISAP Report’s probative value, if any, actually goes to
13 Petitioner’s correct statutory classification under § 1226(a). This is because none of
14 the purported violations would be relevant if Petitioner had indeed been released and
15 re-arrested under § 1182(d)(5)(A), as alleged, (Resp’ts’ Return 7, Dkt. No. 7), since
16 that section permits parole only for urgent humanitarian reasons or significant public
17 benefit and requires that the paroled noncitizen’s return to custody “when the
18 purposes of such parole shall . . . have been served.” 8 U.S.C. to § 1182(d)(5)(A).
19 Put simply, Respondents are relying on a Catch-22: if Petitioner is subject to §
20 1225(b), then he is bound by the parole revocation terms of § 1182(d)(5)(A), and if
21 Petitioner is subject to § 1226(a), then Petitioner’s re-arrest is warranted based on his
22 alleged ATD ISAP program violations.

23 Respectfully submitted this February 2, 2026.

24 SERRATO LAW FIRM, PC

25 By: /S/ Fabian Serrato, Esq.

26 Attorney for Petitioner