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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ALEJANDRO OREGON MERCADO,

11 Petitioner,

12 v.

13 PATRICK DIVVER, *San Diego Field*
14 *Office Director, Immigration and Customs*
15 *Enforcement and Removal Operations*
(ICE/ERO), et al.,

16 Respondents.
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Case No.: 26-cv-01634-TWR-SBC

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS AND MOTION
FOR TEMPORARY RESTRAINING
ORDER**

1 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. The government has
2 carefully reviewed this petition and determined that the legal issues presented concern
3 the statutory authority for U.S. Immigration and Customs Enforcement's (ICE) detention
4 of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), and whether Petitioner is
5 entitled to a bond hearing. While reserving all rights, including the right to appeal, the
6 government respectfully submits this abbreviated response to preserve the legal issues, to
7 conserve judicial and party resources, and to expedite the Court's consideration of this
8 matter.¹

9 The Ninth Circuit has recently stayed application of the District Court's order in
10 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---,
11 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025), outside of the Central District of California.
12 See Exhibit 1. Accordingly, it is the government's position that Petitioner is subject to
13 mandatory detention under § 1225(b), because Petitioner was present in the United States
14 without being admitted or paroled. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216,
15 228 (BIA 2025); see also *See, e.g., Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026
16 WL 323330 (5th Cir. 2026); *Valencia v. Chestnut*, --- F. Supp. 3d ---, 2025 WL 3205133
17 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*, --- F. Supp. 3d ----, 2025 WL 3208284 (E.D.
18 Cal. Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D.
19 Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, 2025 WL 3199872
20 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL
21 313942 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025
22 WL 3095972 (W.D. La. Nov. 4, 2025); *Barrios Sandoval v. Acuna*, No. 6:25-cv-01467,
23 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl,
24 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, --- F. Supp. 3d --
25 --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, --- F. Supp. 3d ----,
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28 ¹ To the extent the Court prefers a more formal response, the government respectfully
requests an opportunity to submit within a reasonable timeframe.

1 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG, 2025
2 WL 2108913 (D. Mass. July 28, 2025).

3 However, the government acknowledges that Courts in this District have
4 repeatedly reached the opposite conclusion. *See, e.g., Arias Torres v. Bondi*, No. 25-cv-
5 2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez Lopez v.*
6 *LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025);
7 *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025);
8 *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v. LaRose*, No.
9 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Lucas-Miguel v.*
10 *LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL 3251580 (S.D. Cal. Nov. 21, 2025);
11 *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13,
12 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12,
13 2025); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13,
14 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 2025);
15 *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal.
16 Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931
17 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7
18 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, 2025 WL 3182998
19 (S.D. Cal. Nov. 13, 2025).

20 On the legal issue of which statute governs Petitioner's detention here—whether it
21 is 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)—the government acknowledges that this
22 District's prior decisions would control the result here if the Court adheres to its prior
23 decision, as the facts are not materially distinguishable for purposes of the Court's
24 decision on the legal issue of which statutory provision authorizes Petitioner's detention.

25 Thus, while the government does not consent to issuance of the writ and reserves
26 all rights, including the right to appeal, and to conserve judicial and party resources
27 while expediting the Court's consideration of this case, the government hereby relies
28 upon, and incorporates by reference, the legal arguments it presented in those cases

1 previously adjudicated by the Court,² and submits fully herein.³

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3 DATED: March 20, 2026

4 Respectfully submitted,

5
6 ADAM GORDON
7 United States Attorney

8 s/ Hunter V. Norton
9 HUNTER V. NORTON
10 Assistant United States Attorney
11 Attorney for Respondents
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14 ² Specifically, the government incorporates by reference all arguments raised in its prior
15 oppositional brief. *See, e.g., Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, ECF No.
16 15 (S.D. Cal. Nov. 5, 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, ECF
17 No. 7 (S.D. Cal. Oct. 21, 2025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, ECF No. 6
18 (S.D. Cal. Oct. 9, 2025); *Garcia v. Noem*, No. 25-cv-2180-DMS-MMP, ECF No. 5 (S.D.
19 Cal. Aug. 27, 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), ECF No. 5
20 (S.D. Cal. Oct. 15, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, ECF No.
21 4 (S.D. Cal. Nov. 20, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB, ECF
22 No. 4 (S.D. Cal. Nov. 12, 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF
No. 5 (S.D. Cal. Nov. 12, 2025); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF
No. 8 (S.D. Cal. Nov. 7, 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 6
(S.D. Cal. Nov. 7, 2025); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, ECF
No. 11 (S.D. Cal. Nov. 14, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL,
ECF No. 3 (S.D. Cal. Nov. 8, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF
No. 4 (S.D. Cal. Nov. 20, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, ECF No. 4
(S.D. Cal. Nov. 6, 2025).

23 ³ Petitioner also challenges his detention citing violations of due process. Should the
24 Court grant the petition, it should decline to address these additional arguments. *INS v.*
25 *Bagamasbad*, 429 U.S. 24, 25 (1976) (“As a general rule courts and agencies are not
26 required to make findings on issues the decision of which is unnecessary to the results
27 they reach.”). Additionally, should the Court find Petitioner is detained under 8 U.S.C. §
28 1226(a) and order a bond hearing under the same, Petitioner bears the burden of proof
with respect to demonstrating that he merits release on bond in custody redetermination
proceedings before the immigration judge. *See* 8 C.F.R. § 1003.19(h)(3) (an alien
applying for custody redetermination by the immigration judge “must first demonstrate,
by clear and convincing evidence, that release would not pose a danger to other persons
or to property. If an alien meets this burden, the alien must further demonstrate, by clear
and convincing evidence, that the alien is likely to appear for any scheduled proceeding
or interview.”).