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9 **UNITED STATES DISTRICT COURT**

10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 CESAR ERNESTO TUNACA-GALINDO,

Case No.: 26-cv-02226-LL-BJW

13 Petitioner,

**RETURN TO PETITION FOR  
WRIT OF HABEAS CORPUS**

14 v.

15 ATTORNEY GENERAL, *United States*  
16 *Department of Justice, et al.,*

17 Respondents.  
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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 the  
3 statutory authority for U.S. Immigration and Customs Enforcement's (ICE) detention of  
4 Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a). While reserving all rights, including  
5 the right to appeal, the government respectfully submits this abbreviated response to  
6 preserve the legal issues, to conserve judicial and party resources, and to expedite the  
7 Court's consideration of this matter.

8 It is the government's position that Petitioner is subject to mandatory detention under  
9 § 1225(b)(2). However, the government acknowledges that this Court, and Courts in this  
10 District, have repeatedly reached the opposite conclusion under the same and/or similar  
11 facts. *See, e.g., Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL 3214773  
12 (S.D. Cal. Nov. 18, 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025  
13 WL 3030457 (S.D. Cal. Oct. 30, 2025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025  
14 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal.  
15 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D.  
16 Cal. Oct. 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL  
17 3251580 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB,  
18 ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF  
19 No. 7 (S.D. Cal. Dec. 12, 2025); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF  
20 No. 9 (S.D. Cal. Nov. 13, 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9  
21 (S.D. Cal. Nov. 19, 2025); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025  
22 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-  
23 DDL, 2025 WL 3558931 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-  
24 AGS-DDL, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-  
25 DEB, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025).

26 The government acknowledges that this Court's prior decisions will control the  
27 result here if the Court adheres to its prior decisions regarding whether Petitioner is  
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1 properly detained under 8 U.S.C. § 1225(b)(2). However, Respondents contest that re-  
2 detaining Petitioner under these circumstances violated his due process rights under the  
3 Fifth Amendment as alleged. ECF No. 1 at ¶¶ 29-40. As clearly described on Petitioner’s  
4 signed Interim Notice Authorizing Parole, he was released from custody on temporary  
5 parole with reporting requirements pursuant to 8 U.S.C. § 1182(d)(5). Exhibit 4 at 1 (“Your  
6 parole authorization is valid for one year beginning from [April 29, 2022] and will  
7 automatically terminate upon your departure or removal from the United States, or at the  
8 end of the one-year period unless ICE provides you with an extension *at its discretion.*”)  
9 (emphasis added).

10 Under the Immigration and Nationality Act (INA), Immigration and Customs  
11 Enforcement (ICE) may choose to release a person on parole. The decision is discretionary  
12 and is made on a case-by-case basis. An immigrant who has been detained at the border,  
13 may be paroled for humanitarian reasons or due to it providing a significant public benefit  
14 (8 U.S.C. § 1182(d)(5)(A)), or, he/she may be conditionally released (8 U.S.C. § 1226(a)).  
15 These are distinct procedures. A person on conditional parole is usually released on their  
16 own recognizance subject to certain conditions such as reporting requirements. To be  
17 released on conditional parole, there must be a finding by ICE that the immigrant does not  
18 pose a risk of flight or danger to the community. *See Ortega-Cervantes v. Gonzalez*, 501  
19 F.3d 1111, 1115 (9th Cir. 2007). No such finding was made here.

20 Furthermore, ICE has statutory and regulatory authority to revoke its parole  
21 decisions and initiate removal proceedings. No immigration court or hearing is required  
22 for revocation under that authority. Parole decisions may be made for broad and practical  
23 reasons related to public benefit, as well as for humanitarian reasons—i.e., while ICE’s  
24 decision may sometimes incorporate flight risk and danger assessment, it is not limited to  
25 those criteria. ICE’s discretionary decisions concerning detention and release are, under 8  
26 U.S.C. § 1182(d)(5)(A), the only statutorily provided exception for a person otherwise  
27 subject to mandatory detention under 8 U.S.C. § 1225(b).

1           Accordingly, the authority to grant and revoke this discretionary parole is vested in  
2 the Secretary of the Department of Homeland Security, who may delegate it. *See* 8 U.S.C.  
3 § 1226(e) (“No court may set aside any action or decision by the Attorney General under  
4 this section regarding the detention of any alien or the revocation or denial of bond or  
5 parole.”); *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (“As we have previously  
6 explained, § 1226(e) precludes an alien from ‘challeng[ing] a “discretionary judgment” by  
7 the Attorney General or a “decision” that the Attorney General has made regarding his  
8 detention or release.’ But § 1226(e) does not preclude ‘challenges [to] the statutory  
9 framework that permits [the alien’s] detention without bail.”); 8 U.S.C. § 1226(b) (“The  
10 Attorney General at any time may revoke a bond or parole authorized under subsection (a),  
11 rearrest the alien under the original warrant, and detain the alien.”).

12           Here, while Petitioner was previously released from custody on temporary  
13 humanitarian parole, his parole expired and automatically terminated on April 29, 2023,  
14 one year after it began. Exhibit 4. Just because ICE did not immediately detain Petitioner  
15 after his parole automatically terminated, does not mean Court should find that Secretary  
16 of the Department of Homeland Security no longer has the statutory authority to re-detain  
17 someone subject to mandatory detention. This would undermine the entire purpose of  
18 temporary humanitarian parole. For example, one reason ICE may release someone subject  
19 to mandatory detention on humanitarian parole under § 1182, is a lack of bed space  
20 availability. 8 C.F.R. § 212.5(e)(1). If there was still a lack of bed space after an  
21 individual’s parole terminated after one year, ICE may choose not to immediately re-detain  
22 and not add to the problem it was trying to alleviate in the first place.

23           Furthermore, there is no basis to order Petitioner’s immediate release from  
24 immigration detention based on the argument that he was not provided written notice of  
25 the expiration of his humanitarian parole. *See Omer G. G. v. Kaiser*, No. 1:25-CV-01471-  
26 KES-SAB (HC), 2025 WL 3254999, \*3 n. 6 (E.D. Cal. Nov. 22, 2025) (“Petitioner’s claim  
27 concerning the regulations is without merit because the regulations governing termination  
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1 of humanitarian parole provide that “[p]arole shall automatically be terminated without  
2 written notice . . . at the expiration of the time for which parole was authorized . . . .” 8  
3 C.F.R. § 212.5(e)(1). As petitioner’s parole expired on August 28, 2025, *see* Doc. 1 at 33,  
4 petitioner was not entitled to notice under the regulations.”). Here, the Court should not  
5 order Petitioner immediately released on prior conditions, and effectively compel DHS to  
6 grant humanitarian parole.

7         Instead, a court may conclude that parole revocation must be supported by an  
8 individualized determination, *see, e.g., Noori v. Larose et al.*, 25-cv-1824, 2025 WL  
9 2800149, at \*7–8 (S.D. Cal. Oct. 1, 2025). Courts have consistently declined to go so far  
10 as ordering DHS to actually *grant* humanitarian parole to a noncitizen by ordering his/her  
11 immediate release from custody subject to previous parole. In turn, the only cognizable  
12 remedy for a petitioner re-detained after the expiration of temporary parole under 8 U.S.C.  
13 § 1182, is an order from the Court consistent with *Singh v. Holder*, 638 F.3d 1196, 1203  
14 (9th Cir. 2011), directing an individualized bond hearing where the government bears the  
15 burden to prove by clear and convincing evidence that the detainee is a flight risk and/or a  
16 danger to the community. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, 2025 WL  
17 3154520 (S.D. Cal. Nov. 12, 2025); *Gao v. LaRose*, No. 25-cv-2084-RSH-SBC, 2025 WL  
18 2770633 (S.D. Cal. Sept. 26, 2025).

19                 DATED: April 17, 2026

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