

ZANDRA L. LOPEZ
California State Bar No. 216567
FEDERAL DEFENDERS OF SAN DIEGO, INC.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Zandra_Lopez@fd.org

Counsel for Mr. Simon Juan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PEDRO SIMON JUAN,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

Respondents.

CASE NO.: 26-cv-2237-AGS-MMP

Traverse

**[Civil Immigration Habeas Petition
Under 28 U.S.C. § 2241]**

26-cv-2237-AGS-MMP

TRAVERSE

INTRODUCTION

Mr. Simon Juan is a citizen of Guatemala who was released into the United States in 2018. Mr. Simon Juan was re-arrested in 2025 with no notice or explanation when he went to an ICE check-in appointment. In his amended petition, Mr. Juan Garcia argued that the revocation of his parole violated the regulations, the Administrative Procedures Act, and due process. *See* Amended Petition at XX, ECF No. 9.

In its Return, the government submits exhibits that corroborate Mr. Simon Juan's allegations. The exhibits corroborate that he was admitted into the country in 2018 under an order of release on recognizance (OREC, also known as conditional parole). ECF No. 12. The exhibits also corroborate that ICE failed to provide Mr. Juan Simon with any notice or opportunity to respond prior to re-detaining him in 2025. ECF No. 12-1 at 12-13. According to the government's exhibits, Mr. Simon Juan reported to an ICE check-in and there "SIMON was informed he was under arrest and would be remanded back into custody. SIMON was taken into custody and transported to SND staging for processing without incident." *Id.*

Rather than engaging with the legal arguments presented in the Amended petition, the government never addresses Mr. Simon Juan's argument that he is entitled to immediate release because the government revoked his parole with no notice or explanation. *See* Gov. Return at ECF No. 12. The government has thus waived any argument to the contrary. *See United States v. Cabrera*, 796 F. Supp. 3d 660, 664 (S.D. Cal. 2025) (recognizing that "a party waives argument when it fails to respond to an argument made to the court" quoting *United States v. Caceres-Olla*, 738 F.3d 1051, 1053 n.1 (9th Cir. 2013)). Instead, the government's only arguments are that (1) Mr. Simon Juan failed to sufficiently plead his claims and (2) Mr. Simon Juan failed to exhaust his administrative remedies by not appealing

1 the denial of bond to the BIA. ECF No. 12 at 3-5. Both of those arguments lack
2 merit.

3 **I. The petition was sufficiently plead.**

4 In his amended petition, Mr. Juan Garcia argued that the revocation of his
5 parole violated the regulations, the Administrative Procedures Act, and due process.
6 *See* Amended Petition, ECF No. 9. The government does not engage with the legal
7 arguments but claims instead that there are insufficient facts to support Mr. Simon
8 Juan would be entitled to any process. ECF. 12 at 3-4. As stated above, because the
9 government does not engage with the arguments in the Petition, it has thus waived
10 any argument to the contrary. *Cabrera*, 796 F. Supp. 3d at 664.

11 The government appears to hang its hat on the fact that Mr. Simon Juan was
12 admitted into the country under a conditional parole or OREC rather than a
13 humanitarian parole. ECF 12 at 4. But the two paroles are analogous. Parole can
14 be made for humanitarian reasons or for it providing a significant public benefit
15 under 8 U.S.C. § 1182(d)(5)(A), or it can be for conditional parole or OREC under
16 8 U.S.C. § 1226(a). *Tukhlaev v. Imperial Regional Detention Facility*, No. 26-CV-
17 2524-JES-VET, 2026 WL 1270055, at *1 (S.D. Cal. May 8, 2026) (citing *J.S.H.M*
18 *v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 WL 2938808, at *6 (E.D. Cal. Oct.
19 16, 2025)). Courts have recognized that typically, the term “released on their own
20 recognizance” refers to conditional parole. *S.H.M*, 2025 WL 2938808, at *6; *see*
21 *also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (“It is
22 apparent that the INS used the phrase ‘released on recognizance’ as another name
23 for ‘conditional parole’ under § 1226(a)”); *Faizyan v. Casey*, No. 3:25-CV-0884-
24 RBM-JLB, 2025 WL 3208844, at *1 n.2 (S.D. Cal. Nov. 17, 2025).

25 Using the analogous reasoning in humanitarian parole cases, several district
26 courts have found due process violations where the petitioners in the cases were
27 specifically identified to be released under OREC’s conditional parole. *Tukhlaev*,
28 2026 WL 1270055, at *1 (granting immediate release on due process grounds to

petitioner who was previously released on OREC); *Teran Hurtado, v. Larose*, No. 3:26-CV-00977-BTM-DDL, 2026 WL 1266121, at *2 (S.D. Cal. May 8, 2026) (same); *Yatcin v. Lyons*, No. 26CV1707 DMS VET, 2026 WL 1133899, at *1–2 (S.D. Cal. Apr. 27, 2026) (granting on due process grounds because petitioner previously released on OREC “received no notice or a pre-deprivation individualized determination.”); *Nicolas v. Mullin*, No. 26-CV-2464 JLS (MMP), 2026 WL 1113726, at *1–3 (S.D. Cal. Apr. 24, 2026) (same); *Gzirishvili v. LaRose*, No. 3:26-CV-1647-CAB-MMP, 2026 WL 790746, at *1–2 (S.D. Cal. Mar. 20, 2026) (applying the lack of notice analysis in *Noori v. LaRose*, 807 F. Supp. 3d 1146 (S.D. Cal. 2025) to a petitioner who was previously released on OREC); *C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO, 2025 WL 3059549, at *9 (E.D. Cal. Nov. 3, 2025) (finding due process violation where petitioner was originally released on OREC); *Leiva Flores*, 2025 WL 3228306, at *5 (similarly finding procedural due process violation for petitioner released on OREC and requiring hearing before detention).

Mr. Simon Juan addressed the failure to provide notice and the due process violations in his amended pleading. Thus, the petition sufficiently pled. And the government waives any arguments on the merits.

II. There was no need to exhaust.

The government argues that Mr. Simon Juan failed to exhaust because he was required to appeal the denial of bond to the BIA. ECF 12 at 4. But Mr. Simon Juan’s amended habeas petition never challenged the IJ’s denial of bond—thus, he need not exhaust an argument that he did not make to this Court.

1 **CONCLUSION**

2 Because the government's return is non-responsive and waives the claims
3 Mr. Simon Juan made, this Court should order his immediate release.

4
5 Respectfully submitted,

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7 Dated: May 11, 2026

s/ Zandra Lopez

Zandra Lopez

Federal Defenders of San Diego, Inc.

Email: Zandra_Lopez@fd.org