ADAM GORDON
United States Attorney
ERIN M. DIMBLEBY
Assistant U.S. Attorney
California Bar No. 323359
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-6987
Email: Erin.Dimbleby@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KENNY MOISES RODRIGUEZ-SILVA, Petitioner, v. PATRICK DIVVER; et al., Respondents.	Case No.: 26-cv-2411-TWR-VET **SUPPLEMENTAL RESPONSE**

On April 17, 2026, the Court issued an order which, *inter alia*, directed Respondents to provide a status update on removal efforts during the 90-day statutory period provided pursuant to 8 U.S.C. § 1231(a). ECF No. 4. Pursuant to the Court's order, Respondents respectfully provide the following status update. On April 20, 2026, Petitioner filed a Petition for Review and Motion to Stay Removal before the Ninth Circuit. *See* No. 26-2426. Under General Order 6.4, a temporary stay of removal went into effect that same day. Under Ninth Circuit precedent, detention authority reverts from 8 U.S.C. § 1231(a) to the previous

detention authority that was in effect during removal proceedings when a stay with the court of appeals is in place. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059–60 (9th Cir. 2008) ("The statute makes clear that when a court of appeals issues a stay of removal pending its decision on an alien's petition for review of his removal order, the removal period begins only after the court denies the petition and withdraws the stay of removal."). Accordingly, on April 20, 2026, when the Ninth Circuit issued a stay of Petitioner's removal, the detention authority over Petitioner reverted to 8 U.S.C. § 1225(b)(2).

For purposes of judicial efficiency, Respondents provide the following supplemental response. It is the government's position that Petitioner is subject to mandatory detention under § 1225(b)(2). However, the government acknowledges 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).

The government acknowledges that this Court's prior decisions will control the result

here if the Court adheres to its prior decisions, as the facts are not materially distinguishable for purposes of the Court's decision. Accordingly, Respondents therefore do not oppose an order from this Court directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a).[1]

DATED: June 11, 2026

ADAM GORDON
United States Attorney

s/ Erin Dimbleby
ERIN DIMBLEBY
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).