

1 ADAM GORDON
United States Attorney
2 JACOB T. METZGER
Special Assistant U.S. Attorney
3 Ohio State Bar No. 104783
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8693
Mobile: (619) 885-2119
6 Facsimile: (619) 546-7751
Email: jacob.metzger@usdoj.gov

7 Attorneys for Respondents
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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 GERARDO ANTONIO LOPEZ-FLORES,
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Petitioner,
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v.
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CHRISTOPHER J. LAROSE, *et al.*,
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Respondents.
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Case No.: 26-CV-02760-LL-SBC

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

1 **A. Overview**

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. The government has
3 carefully reviewed this petition and determined that the legal issues presented concern the
4 statutory authority for U.S. Immigration and Customs Enforcement's (ICE) detention of
5 Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a). While reserving all rights, including
6 the right to appeal, the government respectfully submits this abbreviated response to
7 preserve the legal issues, to conserve judicial and party resources, and to expedite the
8 Court's consideration of this matter. Ultimately, Petitioner's asserts improper Fourth
9 Amendment and habeas claims; however, the government acknowledges that the Courts in
10 this District have repeatedly concluded that noncitizens in a similar circumstance as
11 Petitioner are not subject to mandatory detention under 8 U.S.C. § 1226(a).

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13 **B. Petitioner's Asserted Fourth Amendment Claims Fail**

14 To the extent Petitioner asserts claims under the Fourth Amendment, he fails to
15 explain why release is the remedy for such alleged violations. *United States v. Crews*,
16 445 U.S. 463, 474 (1980) (noting, in the criminal context, that Fourth Amendment's
17 "exclusionary principle" "delimits what proof the Government may offer against the
18 accused at trial, closing the courtroom door to evidence secured by official lawlessness,"
19 but an individual "is not himself a suppressible 'fruit'"); *Cruz v. Barr*, 926 F.3d 1128,
20 1146 (9th Cir. 2019) (releasing petitioner on Fourth Amendment grounds because fruits
21 of the regulatory violation were the only evidence of petitioner's alienage).

22 Moreover, Fourth Amendment claims related to alienage "belong in front of an
23 Immigration Judge, not a federal district court." See *Marvan v. Slaughter*, No. CV 25-49-
24 H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (denying habeas petition
25 challenging detention based on Fourth Amendment violations for lack of subject matter
26 jurisdiction). Petitioner cannot simply "bypass the immigration courts and proceed
27 directly to district court. Instead, [he] must exhaust the administrative process before [he]

1 can access the federal courts.’” *Id.* at *4 (quoting *J.E.F.M.*, 837 F.3d at 1029). To the
 2 extent Petitioner desires to bring such claims, this district court does not have jurisdiction.
 3 Under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and fact . . . arising
 4 from any action taken or proceeding brought to remove an alien from the United States
 5 under this subchapter shall be available only in judicial review of a final order under this
 6 section.” Further, judicial review of a final order is available only through “a petition for
 7 review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5).

8 9 **C. Petitioner Has Asserted Improper Habeas Claims Regarding Expedited** 10 **Removal and Commencement of Removal Proceedings**

11 The Court should deny Petitioner’s petition to the extent he asserts claims
 12 regarding expedited removal proceedings and the commencement of removal
 13 proceedings. An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in
 14 custody” under federal authority “in violation of the Constitution or laws or treaties of
 15 the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only
 16 the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir.
 17 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security*
 18 *v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
 19 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The
 20 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
 21 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the
 22 relevant question is whether, based on the allegations in the petition, release is *legally*
 23 *required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in
 24 original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry
 25 is whether success on the petitioner’s claim would “necessarily lead to immediate or
 26 speedier release.”). Here, a review of such claims would not automatically entitle him to
 27 release from detention. *See Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL

2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners' claims did not arise under § 2241 because they were not arguing they were unlawfully in custody and receiving the requested relief would not entitle them to release); *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065).

D. Petitioner, prior to this detention, had previously been released from immigration custody and previous Court decisions have reached the conclusion that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(a)

Petitioner was previously released from immigration custody on conditional parole issued under 8 U.S.C. § 1226(a). 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, 2025); *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.*

1 *LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Amaya v.*
2 *Noem*, No. 25cv2892-BTM-DEB, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025).

3 The government acknowledges that this Court's prior decisions will control the
4 result here if the Court adheres to its prior decisions, as the facts are not materially
5 distinguishable for purposes of the Court's decision, and on that basis the government does
6 not oppose the petition and defers to the Court on the appropriate relief.¹

7 DATED: May 11, 2026

Respectfully submitted,

8
9 ADAM GORDON
United States Attorney

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11 *s/ Jacob T. Metzger*
12 JACOB T. METZGER
13 Special Assistant U.S. Attorney
14 Attorney for Respondents
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26 ¹ To the extent the Court issues an order directing a bond hearing under 1226(a),
27 considering heavy caseloads and staffing levels, Respondents respectfully request that
28 such order provide the government 14 days from issuance to hold such bond hearing.