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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ORLIN ALEXANDER PEREZ-CANAN, <i>Petitioner,</i> v. JEREMY CASEY, Facility Administrator, Imperial Regional Detention Facility; FIELD OFFICE DIRECTOR, PATRICK DIVVER, U.S. Immigration and Customs Enforcement San Diego Field Office; DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States, <i>Respondents.</i>	Case No.: 3:26-cv-03509-BJC-DEB PETITIONER'S TRAVERSE AND REPLY TO RESPONDENTS' RETURN TO THE PETITION FOR A WRIT OF HABEAS CORPUS 28 U.S.C. § 2241
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**PETITIONER'S TRAVERSE AND REPLY TO
RESPONDENTS' RETURN TO THE PETITION FOR A WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner Orlin Alexander Perez-Canan respectfully submits this Traverse and Reply to Respondents' Return to the Petition for a Writ of Habeas Corpus (ECF No. 5). Respondents' Return does not oppose the Petition. It concedes that this Court — and courts throughout this District — have repeatedly rejected the government's detention theory on materially indistinguishable facts, that those decisions control the outcome here, and, in Respondents' own words, that "the government does not oppose the petition and defers to the Court on the appropriate relief."

Because Respondents do not oppose the Petition, only the question of remedy remains. The Petition asks this Court to order Mr. Perez-Canan's immediate release and, in the alternative, to conduct a custody hearing before this Court within seven days. Respondents' sole qualification — a single footnote asking for fourteen days to hold an agency bond hearing under 8 U.S.C. § 1226(a) should the Court order one — should be rejected. That request seeks the very remand to the Immigration Court that the Petition demonstrates would be futile, and it would extend an unlawful detention that has now exceeded 120 days and stands at 122 days as of the date of this filing.

II. RESPONDENTS DO NOT OPPOSE THE PETITION AND CONCEDE THE CONTROLLING LAW

Respondents' Return is, by its own characterization, an "abbreviated response." It states the government's position that Mr. Perez-Canan is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), but then immediately acknowledges that "this Court, and Courts in this District, have repeatedly reached the opposite conclusion under the same and/or similar facts." Respondents proceed to collect more than a dozen of this District's decisions rejecting that position — including,

among others, *Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB; *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG; *Beltran v. Noem*, No. 25cv2650-LL-DEB; *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); and *Amaya v. Noem*, No. 25cv2892-BTM-DEB — all decided against the government on comparable facts.

Respondents then concede the dispositive point: “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, and on that basis the government does not oppose the petition and defers to the Court on the appropriate relief.” A return that does not oppose the petition, and that affirmatively concedes the controlling law compels relief, leaves nothing for the Court to resolve on the merits. The Court should accept Respondents’ concession and issue the writ.

Respondents’ lingering assertion that Mr. Perez-Canan is “subject to mandatory detention under § 1225(b)(2)” does not alter that conclusion. The assertion is stated in a single sentence, unaccompanied by any argument distinguishing the controlling authority Respondents themselves cite. An undeveloped, conclusory position — advanced without any attempt to distinguish directly adverse precedent — is forfeited, and in any event cannot overcome a body of District authority that Respondents concede is not materially distinguishable.

III. THE § 1225(b)(2) THEORY FAILS ON RESPONDENTS’ OWN ADMISSIONS

Respondents’ own Return refutes their § 1225(b)(2) theory. Respondents admit that “Petitioner was previously released from immigration custody on conditional parole issued under 8 U.S.C. § 1226(a).” That admission is fatal: ICE’s own prior treatment of Mr. Perez-Canan as a § 1226(a) detainee — released on conditional parole following an individualized determination — is

incompatible with the contention that he is now an applicant for admission subject to detention under § 1225(b)(2).

The statutory framework confirms the point. Section 1225(b) governs arriving aliens and applicants for admission apprehended at or near the border or a port of entry; § 1226 governs the apprehension and detention of aliens already present in the interior pending a decision on removal. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018). Mr. Perez-Canan is, on the undisputed facts, an interior arrestee: he entered the United States in 2019, was released to a sponsor, had his removal proceedings terminated in 2022, remained at liberty for nearly four years, and was re-arrested in the interior of the United States on February 26, 2026, far from any port of entry. The controlling decisions Respondents cite hold that § 1226(a) — not § 1225(b)(2) — governs detention on precisely these facts.

Even if § 1226(a) supplied the governing authority, that provision makes detention discretionary and contemplates release on bond or conditional parole following an individualized assessment of flight risk and danger. Respondents have detained Mr. Perez-Canan for 122 days without any individualized determination that he presents a flight risk or a danger to the community, treating his detention as if it were mandatory. Nothing in § 1226 authorizes that treatment.

IV. THE COURT SHOULD ORDER IMMEDIATE RELEASE

Because Respondents do not oppose the Petition and concede that the writ should issue, the only open question is the remedy. The Petition's primary request is immediate release, and that is the remedy this record requires. Mr. Perez-Canan held his liberty in the United States for more than six years before it was summarily revoked; restoring that status quo ante is the only remedy adequate to a detention that the government does not defend. The habeas statute directs the Court

to “dispose of the matter as law and justice require.” 28 U.S.C. § 2243. Here, law and justice require Mr. Perez-Canan’s release.

V. RESPONDENTS’ REQUEST FOR FOURTEEN DAYS TO HOLD AN AGENCY

BOND HEARING SHOULD BE DENIED

The Return’s only qualification appears in a footnote: should the Court order a bond hearing under § 1226(a), Respondents ask to be given fourteen days from issuance of the order to hold that hearing. The request should be denied for three reasons.

First, the Petition does not seek an agency bond hearing. It expressly declines to request a remand to the Immigration Court, because bond is being uniformly denied before the Imperial Immigration Court under *Matter of Yajure Hurtado*, and because the Board of Immigration Appeals cannot adjudicate the lawfulness of its own binding precedent. *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). A fourteen-day agency bond hearing is the very relief the Petition demonstrates would be futile.

Second, if the Court is inclined to order any custody hearing rather than immediate release, the Petition asks that this Court itself conduct that hearing within seven days, with Respondents bearing the burden of establishing, by clear and convincing evidence, that Mr. Perez-Canan is a flight risk or a danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). That is the appropriate alternative to release — not a return to the agency that has already shown itself unable to supply lawful process.

Third, fourteen additional days is two more weeks of detention that the government does not defend, layered on top of the 122 days Mr. Perez-Canan has already served. Each additional day of concededly unlawful detention is itself an irreparable constitutional injury that no later

administrative proceeding can remedy. There is no basis to prolong a detention the government declines to justify.

VI. THE UNREBUTTED STATUTORY AND CONSTITUTIONAL CLAIMS

WARRANT DECLARATORY RELIEF

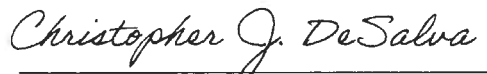
Respondents do not contest the Petition's claims that Mr. Perez-Canan's detention violates the Immigration and Nationality Act, violates the Administrative Procedure Act, and violates the Due Process Clause of the Fifth Amendment. Those claims stand unrebutted on this record. Consistent with the relief requested in the Petition, the Court should declare that Mr. Perez-Canan's detention violates the INA and the Due Process Clause, and should grant the writ.

CONCLUSION

For the foregoing reasons, and because Respondents do not oppose the Petition, Petitioner respectfully requests that the Court grant the Petition, issue the writ of habeas corpus, and order Mr. Perez-Canan's immediate release from custody. Petitioner further requests that the Court deny Respondents' request for fourteen days to hold an agency bond hearing; that, in the alternative to immediate release, the Court conduct a custody hearing within seven days at which Respondents bear the burden under *Singh v. Holder*; and that the Court grant Petitioner his reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, together with such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: June 28, 2026



Christopher J. DeSalva, Esq.
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on **June 28, 2026**, I electronically filed the foregoing PETITIONER'S TRAVERSE AND REPLY TO RESPONDENTS' RETURN TO THE PETITION FOR A WRIT OF HABEAS CORPUS with the Clerk of the Court for the United States District Court for the Southern District of California using the CM/ECF system, which will send notification of such filing to all counsel of record, including:

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