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DETAINED

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

**CELIMAR Y. CHIRINOS DE
HERNANDEZ**

Case No.: 26-cv-3629-RBM-SBC

Petitioner,

vs.

CHRISTOPHER J. LAROSE, et al.,

Respondents.

**PETITIONER'S TRAVERSE IN
SUPPORT OF HIS PETITION FOR
WRIT OF HABEAS CORPUS**

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

Petitioner, Celimar Chirinos de Hernandez, through undersigned counsel,
respectfully submits this Traverse to Respondent's Return and in support of his
Petition for the Writ of Habeas Corpus.

PETITIONER'S Traverse
In the Matter of Chirinos De Hernandez

I. INTRODUCTION

Petitioner, by and through undersigned counsel, respectfully submits this Traverse to Respondents' Return and in further support of his Petition for Writ of Habeas Corpus.

Respondents' Response rests on two central premises: first, that Petitioner has failed to plead sufficient factual information to establish habeas jurisdiction or Article III standing under *Pinson v. Carvajal*; and second, that Petitioner is subject to mandatory statutory detention under 8 U.S.C. § 1225(b)(2). Both premises are incorrect.

Petitioner does not bring a generalized grievance or a challenge detached from her confinement. Rather, Petitioner explicitly challenges the legality and duration of her physical executive detention, a core claim that falls squarely within the historic scope of the writ of habeas corpus under 28 U.S.C. § 2241. Success on her claim legally requires her release from unlawful custody, satisfying both Article III standing requirements and federal habeas pleading standards.

Furthermore, Respondents' reliance on the categorical mandatory detention framework of § 1225(b)(2) is unavailing. Respondents themselves openly

1 acknowledge that this Court, and multiple other courts within this District, have
2 repeatedly rejected the government's interpretation of § 1225(b)(2) under the
3 same or nearly identical facts. Because the government fails to provide a lawful,
4 individualized constitutional justification for her ongoing confinement, her
5 continued detention is arbitrary and violates due process.
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7 8 **II. FACTUAL BACKGROUND**

9 Petitioner Celimar Chirnos de Hernandez is currently held in immigration
10 custody under federal authority within the jurisdiction of this Court. She filed a
11 timely Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to contest
12 the lawfulness of her physical restraint and secure her release.
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14 On June 28, 2026, Respondents filed their Response to the Petition. In it,
15 the government argued that the Petition fails to supply sufficient or coherent
16 factual information to meet the demanding standards of Habeas Corpus Rule 2(c),
17 asserting that the claims do not properly attack the "legality or duration of
18 confinement" under *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023).
19 Concurrently, the government asserted that her custody is mandatory under 8
20 U.S.C. § 1225(b)(2).
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24 However, recognizing a long line of adverse controlling precedents in this
25 District, the government explicitly conceded that if this Court adheres to its prior
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1 decisions, those decisions control the outcome here. Consequently, Respondents
2 stated they do not oppose an alternative order directing that a bond hearing be held
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4 under 8 U.S.C. § 1226(a).

5 III. ARGUMENT

6 7 **A. ICE failed to comply with its own regulations by redetaining Ms. 8 Chirinos de Hernandez's after issuance of parole under 8 C.F.R. 9 § 212.5, violating the Administrative Procedures Act and Due Process.**

10 When ICE detained Ms. Chirinos de Hernandez, it did not say that it was
11 revoking her parole, so it is unclear whether a revocation occurred. Either way, the
12 government's actions violate the Administrative Procedures Act and Due Process.
13 Under the Administrative Procedures Act (APA), an agency action may be held
14 unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or
15 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an abuse
16 of discretion if the agency "entirely failed to consider an important aspect of the
17 problem, offered an explanation for its decision that runs counter to the evidence
18 before the agency, or is so implausible that it could not be ascribed to a difference
19 in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs.*
20 *of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S.,*
21 *Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). For a challenged
22 agency action to be upheld, the agency "must explain the evidence which is
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1 available, and must offer a rational connection between the facts found and the
2 choice made.” *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983) (internal quotations
3 omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168
4 (1962)).

5
6 Here, redetention of Ms. Chirnos de Hernandez’s after issuance of parole
7 violated the APA. Petitioner has a reasonable expectation of liberty and no material
8 change of circumstances warranted redetention. Doing so violated the APA
9 because the agency did not “offer a rational connection between the facts found
10 and the choice made”—i.e., the fact that Ms. Chirnos de Hernandez was still on
11 parole, yet the agency decided to detain her. *Motor Vehicle Mfrs*, 463 U.S. at 52.
12 And nothing suggests that there was a “rational” reason for this choice, given that
13 Ms. Chirnos de Hernandez believed she had filed an asylum application and
14 complied with all the conditions of her parole and was not engaging in criminal
15 activity at the time of her arrest. This was the epitome of an “arbitrary” and
16 “capricious” act under the APA. 5 U.S.C. § 706(2)(A).

17
18 The agency violated the APA by redetaining without a material change of
19 circumstances. Per ICE regulations, a person shall only be “returned to the custody
20 from which he was paroled” when “the purposes of such parole . . . have been
21 served.” 8 U.S.C. § 1182(d)(5)(A); see also 8 C.F.R. § 212.5(e)(2)(i) (parole may
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1 only be terminated “upon accomplishment of the purpose for which parole was
2 authorized”); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the
3 regulations permit revocation of parole when “neither humanitarian reasons nor
4 public benefit warrants the [noncitizen’s] continued presence.” 8 C.F.R. §
5 212.5(e)(2)(i). But under either scenario, no redetention after parole shall occur
6 absent a change of material circumstances.
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9 None of this occurred here. Because the purpose of Ms. Chirinos de
10 Hernandez’s parole was to allow her to apply for asylum, that purpose has not yet
11 “been served” because her asylum claim is still pending. 8 U.S.C. § 1182(d)(5)(A).
12 And the humanitarian reasons for parole—to avoid unnecessary detention when an
13 asylum seeker poses no danger or flight risk—remain the same. Put differently,
14 upon Petitioner’s entry into the United States, Respondents determined that
15 Petitioner was suitable for parole. Respondents have not provided a reasoned
16 explanation or any changed circumstances that would justify their current
17 departure from their prior decision. *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123,
18 1146 (D. Or. 2025). Under the APA, “It is Respondents’ burden to provide a
19 reasoned explanation for their action,” which they will not be able to do. *Id.*
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24 What’s more, Ms. Chirinos de Hernandez never received any written
25 notification of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked her
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1 parole, this decision violated both the statute and the regulation and was “not in
2 accordance with law” under the APA. 5 U.S.C. § 706(2)(A). Several courts have
3 released parolees on this basis. *See Arias v. Larose*, No. 3:25-CV-02595-BTM-
4 MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025); *Noori v. LaRose*, No.
5 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); *Salazar v.*
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7 *Casey*, No. 25-cv-2784 JLS-VET, 2025 WL 3063629 (S.D. Cal. Nov. 3, 2025);
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9 *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB, 2025 WL 3171742 (S.D. Cal. Nov.
10 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL 1898025, at *13 (D.
11 Or. July 9, 2025).

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13 **B. Respondents Mischaracterize the Petition, and 8 U.S.C. § 1252 Does**
14 **Not Bar Habeas Review**

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16 Respondents’ jurisdictional argument rests on a fundamental
17 mischaracterization of Petitioner’s claims. They assert that this Court lacks
18 jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9) because Petitioner’s claims
19 arise from the government’s decision to commence removal proceedings. That is
20 incorrect. Petitioner does not challenge the commencement of removal
21 proceedings, nor does she seek review of any discretionary decision to initiate or
22 adjudicate those proceedings. Instead, she challenges the legality of her continued
23 detention following her release on parole, including her redetention without
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1 individualized justification and without a meaningful opportunity to contest her
2 confinement. Those claims are independent of the removal process and therefore
3 fall outside the scope of § 1252.
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5 The Supreme Court has made clear that § 1252(b)(9) does not bar
6 challenges to detention that are distinct from the removal proceedings themselves.
7 See *Jennings v. Rodriguez*, 583 U.S. 281, 293–95 (2018). Likewise, § 1252(g) is
8 limited to three discrete actions, commencing proceedings, adjudicating cases, and
9 executing removal orders, and does not extend to challenges to the legality of
10 detention. This is not a case in which Petitioner seeks to channel review of her
11 removal proceedings through habeas. It is a straightforward challenge to the
12 lawfulness of her physical detention, which remains independently reviewable.
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16 Respondents’ argument would collapse all detention into the removal
17 process and, in doing so, eliminate habeas review altogether. That is not the law.
18 Habeas corpus remains available to test the legality of executive detention. See
19 *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). As set forth in the Petition, no other
20 neutral adjudicator is available to review the legality of Petitioner’s detention. The
21 Immigration Judge has already determined that the court lacks jurisdiction over
22 her custody, leaving habeas as the only avenue to vindicate her constitutional
23 rights.
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1 Respondents' reliance on cases applying § 1252(g) is misplaced because
2 those cases involved challenges tied to the government's discretionary decision to
3 initiate or pursue removal proceedings. Petitioner's claim is different. She does
4 not seek to stop removal proceedings, challenge the Notice to Appear, or obtain
5 review of the decision to place her in proceedings. She challenges the legality of
6 her continued physical custody after release, where Respondents have failed to
7 provide individualized justification or a meaningful opportunity to contest
8 detention. Treating that claim as barred would expand § 1252(g) beyond its
9 narrow text and would effectively foreclose habeas review of immigration
10 detention altogether. Because Petitioner challenges the lawfulness of her
11 detention, not the decision to initiate removal proceedings, this Court retains
12 jurisdiction under 28 U.S.C. § 2241. Respondents' jurisdictional argument should
13 be rejected.

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18 **C. Respondents Fail to Justify Petitioner's Redetention**

19 Respondents fail to address one of Petitioner's central claims: that she was
20 released from custody and subsequently redetained without any individualized
21 justification or materially changed circumstances. That failure alone is fatal to
22 their position, as it leaves Respondents without any lawful basis to justify
23 Petitioner's continued detention. Petitioner was granted humanitarian parole and
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1 released after immigration authorities determined that detention was not
2 necessary. While on release, she complied with all requirements, appeared for her
3 proceedings, and pursued relief. Respondents do not dispute these facts, nor do
4 they identify any conduct suggesting that Petitioner poses a danger to the
5 community or a flight risk. Nor do Respondents contend that Petitioner violated
6 any condition of her release.
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9 As set forth in the Petition, once the government has exercised its discretion
10 to release an individual from custody, that individual possesses a protected liberty
11 interest in remaining out of detention absent a lawful, individualized justification
12 for re-arrest. Instead, Respondents rely on the existence of an alleged arrest
13 warrant. But they do not explain how that information, regardless of its existence,
14 establishes that Petitioner presently poses a danger or a flight risk. Nor do they
15 identify when the warrant was issued, whether it was verified, or whether it
16 reflects current circumstances. Most importantly, they do not point to any
17 individualized determination supporting continued detention.
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21 That omission is dispositive. Civil immigration detention is permissible
22 only for limited purposes, including ensuring appearance at proceedings and
23 protecting the community. *See Zadvydas v. Davis*, 533 U.S. 678, 690. Detention
24 that is not tied to those purposes, through an individualized determination of
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1 danger or flight risk, is arbitrary and therefore unlawful. Once the government has
2 determined that an individual may be released, a subsequent decision to re-detain
3 that individual must be supported by individualized, fact-based reasoning
4 demonstrating that detention is now necessary to serve those purposes.
5 Respondents provide no such reasoning. They do not identify changed
6 circumstances, and they do not articulate any finding that Petitioner poses a
7 danger or a flight risk. Their failure to justify Petitioner's redetention renders her
8 continued detention arbitrary, unsupported, and in violation of due process.
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12 **D. Alleged Mandatory Detention Under 8 U.S.C. § 1225 Does Not Resolve**
13 **the Constitutional Question**

14 Respondents argue that Petitioner's detention is lawful because she is
15 subject to mandatory detention under 8 U.S.C. § 1225(b)(2). That argument
16 assumes that a statutory label alone resolves the legality of detention. It does not.
17 Respondents' reliance on § 1225 also fails under their own framework. In
18 *Jennings v. Rodriguez*, the Supreme Court addressed the statutory scope of
19 detention provisions but did not hold that such provisions eliminate constitutional
20 constraints on detention. Respondents, therefore, cannot rely on *Jennings* to avoid
21 the constitutional question presented here.
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25 Respondents' reliance on authorities recognizing § 1225(b)(2) detention
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1 authority does not resolve the issue presented here. Those authorities may address
2 statutory classification, but they do not answer whether due process permits
3 Respondents to re-detain a previously released individual without an
4 individualized determination or a meaningful opportunity to contest the factual
5 basis for detention. Likewise, Respondents' reliance on parole-termination
6 authority does not cure the constitutional defect. The question is not merely
7 whether parole could be revoked; it is whether Respondents may use that
8 revocation to impose continued detention without process.

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12 Even where a statute authorizes detention, the Constitution imposes
13 independent limitations on the government's ability to deprive an individual of
14 liberty. A categorical assertion that detention is "mandatory" does not satisfy that
15 requirement. That requirement necessarily demands an individualized
16 determination that detention is needed to address flight risk or danger to the
17 community, not a categorical assertion that detention is mandatory. Respondents'
18 failure to engage with the constitutional question is dispositive. Their reliance on a
19 statutory label cannot substitute for the individualized and procedural safeguards
20 the Constitution requires. They do not contend that Petitioner has been found to
21 pose a danger to the community or a risk of flight. And they do not identify any
22 process through which such a determination has been made or could be
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1 challenged. Their reliance on § 1225 substitutes a statutory conclusion for the
2 analysis the Constitution requires.

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4 That omission is particularly significant in this case. Petitioner was
5 previously released from custody after the government determined that detention
6 was not necessary. Respondents now seek to justify her continued detention
7 without identifying any materially changed circumstances or providing any
8 individualized explanation for reversing that determination. Section 1225 does not
9 authorize that result. Respondents' own briefing underscores the weakness of their
10 position. They acknowledge that courts in this District have repeatedly rejected
11 their interpretation of § 1225 under materially similar circumstances. Their
12 attempt to distinguish those cases on the basis of newly discovered evidence does
13 not cure the constitutional defect. Even assuming such information exists, due
14 process requires a meaningful opportunity for Petitioner to challenge it through an
15 individualized determination. Respondents have provided no such opportunity. At
16 bottom, the respondents' argument collapses into a single proposition: that the
17 invocation of § 1225 is sufficient to justify detention. That proposition is
18 inconsistent with the fundamental principle that liberty may not be deprived
19 arbitrarily. Section 1225 does not authorize detention untethered to individualized
20 justification, nor does it permit the government to dispense with the procedural
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1 protections required by due process.

2 **E. Respondents' Alternative Request for a Bond Hearing Undermines**
3 **Their Position**
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5 Respondents' alternative request for a bond hearing underscores the central
6 defect in their position: they have not established a lawful basis for Petitioner's
7 detention. That is, Respondents now seek the very determination, whether
8 Petitioner presents a danger or a flight risk, that they have failed to make.
9 Respondents maintain that Petitioner is subject to mandatory detention under 8
10 U.S.C. § 1225(b)(2), a framework that, by their own argument, does not
11 contemplate individualized custody determinations. Yet they simultaneously
12 request that this Court order a bond hearing to assess whether Petitioner poses a
13 danger to the community or a flight risk. Those positions cannot be reconciled. If
14 detention were truly mandatory, no such inquiry would be necessary.
15 Respondents' request, therefore, concedes that Petitioner's continued detention
16 turns on precisely the type of individualized determination they have failed to
17 make.
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19 More importantly, Respondents do not contend that any such determination
20 has already occurred. They do not assert that Petitioner has been found to be a
21 danger to the community or a flight risk. Instead, they seek an opportunity to
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1 make that determination only after months of detention. That approach reverses
2 the constitutional framework governing deprivation of liberty. Respondents
3 cannot justify detention by detaining first and attempting to establish a basis later.
4 This case is not about whether Respondents might be able to justify Petitioner's
5 detention in the future. It is about whether they have done so. They have not.
6 Their request for a bond hearing, therefore, confirms that Petitioner's current
7 detention lacks a lawful, individualized basis.
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10 **IV. CONCLUSION AND PRAYER FOR RELIEF**

11 Respondents' Return fails to establish a lawful basis for Petitioner's
12 continued detention. Their jurisdictional arguments mischaracterize the Petition
13 and are inconsistent with governing law. Their reliance on 8 U.S.C. § 1225(b)(2)
14 ignores the constitutional limitations on detention and fails to address Petitioner's
15 central claim: that she was redetained without individualized justification and
16 without due process.
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19 Petitioner challenges the legality of her detention, not the commencement
20 of removal proceedings. She need not remain in custody where Respondents have
21 failed to provide any lawful, individualized basis for that detention.
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24 Accordingly, the Court should reject Respondents' position, grant the relief
25 requested, and order Petitioner's immediate release or, at a minimum, provide her
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1 with a prompt and meaningful opportunity to challenge her detention before a
2 neutral adjudicator.
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5 Respectfully submitted,

6 Dated: June 30, 2026

7 //s// Mario Portugal

8 Mario Portugal

9 Pro Bono Counsel for Petitioner,
10 Celimar Chirinos de Hernandez
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