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

13 JAVIER ORLANDO GIMENEZ  
14 MONTILLA,

15 Petitioner,

16 v.

17 WARDEN, OTAY MESA IMPERIAL  
18 REGIONAL DETENTION FACILITY,

19 Respondents.  
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Case No.: 26-cv-03798-JO-MMP

**RESPONSE TO PETITION**

1       Petitioner has filed a habeas petition under 28 U.S.C. § 2241. The government has  
2 carefully reviewed this petition and determined that the legal issues presented concern the  
3 statutory authority for U.S. Immigration and Customs Enforcement's (ICE) detention of  
4 Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a). While reserving all rights, including  
5 the right to appeal, the government respectfully submits this abbreviated response to  
6 preserve the legal issues, to conserve judicial and party resources, and to expedite the  
7 Court's consideration of this matter.

8       Petitioner was previously released from immigration custody on parole issued under  
9 8 U.S.C. § 1182(d)(5). Respondents have insufficient information regarding termination of  
10 that parole, pursuant to 8 C.F.R. § 212.5(e)(2), to provide to the Court. It is the  
11 government's position that Petitioner is subject to mandatory detention under § 1225(b)(2).  
12 However, the government acknowledges that this Court, and Courts in this District, have  
13 repeatedly reached the opposite conclusion under the same and/or similar facts. *See, e.g.,*  
14 *Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18,  
15 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D.  
16 Cal. Oct. 30, 2025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D.  
17 Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina*  
18 *v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025);  
19 *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL 3251580 (S.D. Cal. Nov.  
20 21, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB, ECF No. 6 (S.D. Cal.  
21 Nov. 13, 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec.  
22 12, 2025); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov.  
23 13, 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19,  
24 2025); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D.  
25 Cal. Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL  
26 3558931 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF

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

3 Regarding the Court's July 1, 2026 Order directing Respondents to "identify and  
4 address any individualized concerns regarding Petitioner's danger to the community or  
5 flight risk". *See* ECF No. 3. Respondents provide that Petitioner has been unlawfully  
6 present in the United States since September 2021 and did not present himself at a port of  
7 entry nor was he inspected or admitted by a Customs and Border Protection Officer at time  
8 of entry. *See* Exhibit 1.

9 The government acknowledges that this Court's prior decisions will control the  
10 result here if the Court adheres to its prior decisions, as the facts are not materially  
11 distinguishable for purposes of the Court's decision, and on that basis the government does  
12 not oppose the petition and defers to the Court on the appropriate relief.<sup>1</sup>

13 DATED: July 8, 2026

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United States Attorney

15 *s/Danielle L. Brown*  
16 DANIELLE L. BROWN  
17 Special Assistant United States Attorney

18 Attorney for Respondents  
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23 <sup>1</sup> To the extent the Court issues an order directing a bond hearing under 1226(a),  
24 considering heavy caseloads and staffing levels, Respondents respectfully request that  
25 such order provide the government 14 days from issuance to hold such bond hearing.  
26 Respondents also respectfully note that the Ninth Circuit has confirmed that at a bond  
27 hearing under 8 U.S.C. § 1226(a), the burden is on the detainee to demonstrate by a  
28 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).