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

13 AILIN YULETH HERNANDEZ-ANDRES

14 Petitioner,

15 v.

16 MARKWAYNE MULLIN, et al.,

17 Respondents.
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Case No.: 3:26-cv-03826-JES-JLB

RESPONSE TO PETITION

21 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. ECF No. 1. The
22 government has carefully reviewed this petition and determined that the legal issues
23 presented concern the statutory authority for U.S. Immigration and Customs Enforcement's
24 (ICE) detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a). While reserving
25 all rights, including the right to appeal, the government respectfully submits this
26 abbreviated response to preserve the legal issues, to conserve judicial and party resources,
27 and to expedite the Court's consideration of this matter.
28

1 It is the government's position that Petitioner is subject to mandatory detention under
 2 § 1225(b)(2). However, the government acknowledges that this Court, and Courts in this
 3 District, have repeatedly reached the opposite conclusion under the same and/or similar
 4 facts. *See, e.g., Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL 3214773
 5 (S.D. Cal. Nov. 18, 2025); *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025
 6 WL 3030457 (S.D. Cal. Oct. 30, 2025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025
 7 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp.3d 1064 (S.D. Cal.
 8 2025); *Esquivel-Ipina v. LaRose*, 812 F. Supp.3d 1073 (S.D. Cal. 2025); *Lucas-Miguel v.*
 9 *LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL 3251580 (S.D. Cal. Nov. 21, 2025);
 10 *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13,
 11 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12,
 12 2025); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13,
 13 2025); *A.S. v. LaRose*, No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 225);
 14 *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal.
 15 Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931
 16 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7 (S.D.
 17 Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, 2025 WL 3182998 (S.D.
 18 Cal. Nov. 13, 2025).

19 The government acknowledges that this Court's prior decisions will control the
 20 result here if the Court adheres to its prior decisions, as the facts are not materially
 21 distinguishable for purposes of the Court's decision,¹ and on that basis the government
 22 does not oppose the petition and defers to the Court on the appropriate relief.²

23
 24 ¹ Count Three of the Petition seeks to assert a Procedural Due Process Claim. ECF No. 1,
 25 Page ID 13. Should the Court grant the Petition, it should decline to address this
 26 additional argument. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule
 courts and agencies are not required to make findings on issues the decision of which is
 unnecessary to the results they reach.").

27 ² Should the Court decide to issue an order directing a bond hearing under § 1226(a),
 28 considering heavy caseloads and staffing levels, Respondents respectfully request that

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Respectfully submitted

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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).