Lauren Cusitello, CA Bar #257570
SINGLETON SCHREIBER, LLP
491 Camino de la Reina, Suite 1025
San Diego, CA 92108
LCusitello@singletonschreiber.com
619.730.3853

Pro Bono Attorney for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

L.R.S.[1],

Petitioner,

v.

JEREMY CASEY, Warden, Imperial Regional Detention Facility; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MARKWAYNE MULLIN, *as Secretary of the United States Department of Homeland Security*; DAVID VENTURELLA, *as Acting Director of U.S. Immigration and Customs Enforcement*; PATRICK DIVVER, *as ICE Enforcement and Removal Operations San Diego Field Office Director*; and DOES 1–6,

Respondents.

'26CV3926 JO JLB

Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241;

Verified Petition

[1] Petitioner is filing a concurrent motion to proceed under a pseudonym.

Introduction

1. L.R.S. (Petitioner), then 19 years old, came to the United States on December 2, 2022, seeking asylum. *See* Declaration of Lauren Cusitello at ¶¶ 2–3.[2] Since September 16, 2025, L.R.S. has been arbitrarily detained by Respondents at the Imperial Regional Detention Facility, in violation of the Fourth and Fifth Amendments to the United States Constitution and her statutory rights under the Immigration and Nationality Act (INA).

2. Petitioner was detained by immigration officials after entering the United States, and they determined that she posed neither a flight risk nor a danger to the community and released her on her own recognizance three days later. Ex. A.

3. Three years after her release, following a weekend trip to San Diego, Petitioner was riding as a passenger in a car in Arizona that was stopped by immigration officers. She was arrested without a warrant and transferred to the Imperial Regional Detention Facility in Calexico, California. Cusitello Decl. at ¶6.

4. Petitioner, who remains detained at the Imperial Regional Detention Facility in Calexico, California, files this petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging her unlawful arrest by immigration officials on September 16, 2025, the revocation of her release without

[2] This petition relies on facts contained in the attached declaration of Lauren Cusitello, counsel for Petitioner, and from exhibits to that declaration. Further citations will refer to specific exhibits attached to the declaration (Cusitello decl.).

notice and an opportunity to be heard, the illegal denial of a post-detention bond hearing, and her continued detention without a bond hearing.

5. Pursuant to 28 U.S.C. § 2243, L.R.S. requests the Court: (a) issue the writ of habeas corpus; or (b) order Respondents to show cause why the relief Petitioner seeks should not be granted, within **three days of filing this Petition**. 28 U.S.C. § 2243. Should the Court order the latter, Petitioner asks the Court to set a hearing **within five days of Respondents' return** on the order to show cause without requiring Petitioner to serve process, per traditional habeas practice. *Id.*; *see also Wright v. Dickson*, 336 F.2d 878, 885 (9th Cir. 1964).

6. L.R.S. is imprisoned by the federal government under color of the Immigration and Nationality Act. Her continued imprisonment is unlawful because: (1) L.R.S. was deprived of her post-release liberty without a hearing, in violation of her rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution; and (2) she was denied a bond hearing in violation of the Immigration and Nationality Act.

7. Under these circumstances, the Constitution requires L.R.S.'s immediate release from further imprisonment.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 1331 (federal question jurisdiction); Article

I, Section 9, Clause 2 of the U.S. Constitution (Suspension Clause); and Article III of the U.S. Constitution.

9. Venue is proper in the Southern District of California because Petitioner is in Respondents' custody in Calexico, California. Venue is also proper because Respondents are officers or employees of the United States acting in their official capacities and because the federal Respondents with custody of L.R.S. reside in this district. *See* 28 U.S.C. § 2243.

Parties

10. Petitioner L.R.S. is detained at the Imperial Regional Detention Facility in Calexico, California.

11. Respondent **Markwayne Mullin** is the Secretary of the Department of Homeland Security and is sued in his official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).

12. Respondent **David Venturella** is the Acting Director of U.S. Customs and Immigration Enforcement and is sued in his official capacity. ICE is responsible for Petitioner's detention.

13. Respondent **Patrick Divver** is the Immigration and Customs Enforcement San Diego Field Office Director and is sued in his official capacity. The San Diego ICE Field Office is responsible for Petitioner's detention.

Legal Background

14. The Due Process Clause of the Fifth Amendment to the United States Constitution protects noncitizens in removal proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

"Freedom from imprisonment ... lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citation omitted).

15. Immigration detention is "nonpunitive in purpose and effect," and is justified only after an individualized determination that a noncitizen is a flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690.

16. The Department of Homeland Security's decision to release a noncitizen from its custody "reflect[s] a determination by the government that [the noncitizen] was neither a flight risk or danger to the community, and [the noncitizen] has a strong interest in remaining at liberty unless she no longer meets those criteria." *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1034 (N.D.Cal. 2025).

17. The Immigration and Nationality Act (INA) governs the detention and release of noncitizens pending the outcome of proceedings to determine their removability from the United States. 8 U.S.C. § 1226(a).

18. Removal proceedings described in section 240 of the INA are the prescribed method of deciding whether an individual, such as Petitioner, should be removed from the United States. *See* 8 U.S.C. § 1229a.

Factual Background

19. Petitioner entered the United States on around about December 2, 2022. She was released on her own recognizance three days later, on December 5, 2022, and served with a

Form I-220A, Order of Release on Recognizance. That order states that it was issued "in accordance with section 236 of the Immigration and Nationality Act." Ex. A at 5.

20. Petitioner filed a Form I-589 application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture with United States Citizenship and Immigration Services (USCIS) on May 16, 2023. Ex. B. That application was forwarded to the Executive Office of Immigration Review (EOIR) on March 28, 2025, after USCIS learned that a Notice to Appear (NTA) had been filed with the court on September 9, 2024. *Id.*

21. The NTA initiating Petitioner's removal proceeding alleged that she was a noncitizen "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." Ex. A. It charged her with inadmissibility pursuant to section 212(a)(6)(A)(i) of the INA. *Id.*

22. On May 5, 2025, L.R.S. appeared for an internet-based hearing before the Miami Immigration Court. Following that hearing, she filed a Form EOIR-33 Change of Address, which notified the court that her address had changed from Miami, Florida, to Phoenix, Arizona. On May 6, 2025, the immigration judge issued an order changing the venue of Petitioner's case to the Phoenix Immigration Court. Cusitello Decl. at ¶5.

23. On August 20, 2025, Petitioner appeared before the Phoenix Immigration Court for a Master Calendar Hearing in her case. At that hearing, L.R.S.'s case was set for a future hearing in 2028. Cusitello Decl. at ¶5.

24. On September 23, 2025, ICE filed a Form I-830E, notifying the court that L.R.S. had been detained on September 17, 2025, and was detained at the Imperial Regional Detention Facility. On October 3, prior counsel filed a Bond Redetermination Request on Petitioner's behalf; that request was denied without a hearing on October 7, 2025. Cusitello Decl. at ¶7; Ex. C. The immigration judge's order stated that the request was denied because Petitioner was "subject to mandatory detention under INA section 235(b)(2) as an applicant for admission." *Id.* (citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)).

25. Petitioner's detention negatively impacted her relationship with prior counsel and her preparation for trial. Ultimately, prior counsel withdrew his representation on the date scheduled for trial in February 2026 and Petitioner had to represent herself at her trial three weeks later. Cusitello Decl. at ¶8–9.

26. Petitioner's detention has continued for over four months after her removal hearing while she pursues an appeal of the immigration judge's decision. Notably, she has been detained for a month since the Board of Immigration Appeals (BIA) returned her case to the Imperial Immigration Court because

the trial had not been properly recorded. Cusitello Decl. at ¶10; Ex. D.

Claims for Relief

First Claim for Relief: Violation of the Fifth Amendment to the United States Constitution (Substantive Due Process)

27. Petitioner repeats the allegations contained in the preceding paragraphs of this Petition as if fully set forth here.

28. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. CONST. AMEND. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

29. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See id.*

30. Petitioner is neither a flight risk nor a danger to the community. She is therefore being detained unlawfully and without justification, in violation of the Due Process Clause of the Fifth Amendment.

31. Petitioner's detention has become punitive because it bears no "reasonable relation" to any legitimate government purpose. *Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715 (1972)). The Imperial Immigration Court's delay in

re-initiating removal proceedings following remand from the BIA compounds the illegality of her continued confinement.

Second Claim for Relief: Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process)

32. Petitioner repeats the allegations contained in the preceding paragraphs of this Petition as if fully set forth here.

33. The Due Process Clause of the Fifth Amendment guarantees Petitioner a significant liberty interest in "remaining free, which developed over the [three years she] resided in the United States." *Noori v. LaRose*, 807 F.Supp.3d 1146, 1164 (S.D. Cal. 2025); *see also Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973) *Morrissey v. Brewer*, 408 U.S. 471, 482 –83 (1972).

34. "In the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (citations omitted). At a bond or release revocation hearing, the government must bear the burden of establishing, by clear and convincing evidence, that the noncitizen poses a risk of flight or danger to the community justifying re-detention. *See Singh v. Holder*, 638 F.3d 1196,

1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024).

35. After finding that she posed **no** risk of flight or danger to the community and releasing her on her own recognizance, the DHS detained her without any consideration for the three years she had spent in the United States. The government did not, has not, and cannot justify Petitioner's detention.

36. This arbitrary imprisonment of an asylum seeker who was complying with the terms of her release and following the laws of the United States offends the Fifth Amendment.

Third Claim for Relief
Violation of 8 U.S.C. § 1226(a)

37. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

38. Section 236(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1226(a), authorizes release from custody for individuals in removal proceedings.

39. While Petitioner's removal proceeding was pending, the BIA decided *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), in which it held that noncitizens apprehended near the border shortly after entry are ineligible for bond because they are detained pursuant to section 235(b)(2)(A) of the INA (codified at 8 U.S.C. § 1235(b)(2)(A)).

40. The arrest that led to Petitioner's re-detention did not occur shortly after she entered the United States, and she is therefore eligible for a bond hearing under section 236(a). *See*

Lopez v. LaRose, No. 26-cv-2293-GC-LEK at *5–6 (S.D. Cal. May 11, 2026); Arias *Hernandez v. Bondi*, No. 25-cv-3320-LL-DEB at *6 (S.D. Cal. Dec. 15, 2025); *Shen v. LaRose*, No. 25-cv-3325-BLM-GPC at *12 (S.D. Cal. Dec. 11, 2025).

41. The agency's failure to hold a post-deprivation bond hearing result from an incorrect interpretation of the governing statute. Because "the government has no evidence that Petitioner poses a flight risk or danger to the community," *Shen* at * 15, the proper remedy is immediate release "under the same conditions as [her] previous order of release on recognizance." *Id.*

Prayer for Relief

Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this petition should not be granted within three days;

(3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that revocation of Petitioner's release on recognizance was made in violation of the Immigration and Nationality Act;

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

(6) Issue an Order prohibiting the Respondents from re-detaining Petitioner or transferring her from the district without the Court's approval;

(7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act and on any other basis justified under law; and

(8) Grant any further relief this Court deems just and proper.

Date: July 8, 2026

/s/ Lauren Cusitello
Lauren Cusitello
Singleton Schreiber LLP
Pro Bono Attorney for Petitioner

Verification

I, Lauren Cusitello, declare as follows:

I am an attorney admitted to practice law in the State of California. Because many of the allegations of this Petition require a legal knowledge that Petitioner does not possess, I am making this verification on her behalf. I have read the foregoing Petition for Writ of Habeas Corpus and know it contents to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the above is true and correct and that this declaration was executed on July 8, 2026.

/s/ *Lauren Cusitello*
Lauren Cusitello
Pro Bono Attorney for Petitioner