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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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| L.R.S.,<br><br>Petitioner,<br><br>v.<br><br>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,<br><br>Respondents. | 26CV3926-JO-JLB<br><br>Petitioner's Traverse/Brief in Reply to the Government's Return to the Petition for a Writ of Habeas Corpus |

## Introduction

The Respondents' return to L.R.S.'s petition for a writ of habeas corpus, which claims to "not oppose the petition," Resp. Br. at 3, in fact does oppose the petition in three material and related respects. First, the Respondents claim that neither of Petitioner's Due Process arguments need to be decided. *Id.* at 3 n.1 (citing *INS v. Bagamsbad*, 429 U.S. 24, 25 (1976)). Second, the return ignores Petitioner's request for immediate release, *see* Pet. Br. at 12, and discusses only the prospect of a "bond hearing under [8 U.S.C. §] 1226(a)." Resp. Br. at 3 n.2. Finally, Respondents "respectfully note that ... the burden is on the detainee to demonstrate by a preponderance of the evidence that [s]he is not a flight risk or danger to the community." *Id.* (citations omitted). This reply will address each of the Respondents' positions that stand in opposition to the remedy outlined in the petition—Petitioner's immediate release—and will further explain why a bond hearing would be an inadequate remedy in this case.

## Argument

When immigration officers encountered L.R.S. in 2022, they correctly determined that she was neither a flight risk nor a danger to the community. She proved those officers right for nearly *three years* in the United States, during which she timely applied for asylum and appeared as ordered before the immigration court. L.R.S. was not arrested or charged with a crime during those three years at liberty, during which she began to build a life in this

country that she hoped would result in a grant of asylum. Instead, she was unlawfully arrested by immigration officers—an arrest which the government does not attempt to justify or explain—and detained in the Imperial Regional Detention Facility. As of this writing, L.R.S. has been imprisoned for **ten months** as a result of her unlawful arrest, and the government has not yet been required to justify that imprisonment.

Respondents posit that *Petitioner* should now be required to prove that she is not a flight risk or danger at a bond hearing. This implies that after three years of liberty in the community and nearly a year of unlawful detention, Petitioner should be required to pay for her freedom. To state this position is to refute it. Additionally, since Petitioner's detention in the fall of 2025, the immigration courts have proven largely unable to serve as impartial adjudicators of the conditions of release, as this brief will further demonstrate. Immediate release is not just the only legally sufficient remedy, but also the remedy that is legally required.

### 1. Because the illegality of Petitioner's detention dictates the appropriate remedies, the Court must decide all the claims contained in the petition.

The parties agree that Petitioner's third claim for relief "concern[s] the statutory authority for U.S. Immigration and Customs Enforcement's (ICE) of Petitioner under 8 U.S.C. § 1225(b)(2)(A) or 1226(a)." Resp. Br. at 2. If that were Petitioner's *only* claim, perhaps an order requiring a bond hearing pursuant to 8 U.S.C. § 1226(a) would be a sufficient remedy.

But Petitioner challenges more than the Department of Homeland Security's authority to hold her under 8 U.S.C. § 1225(b)(2)(A)—she contests the legality of DHS's decision to deprive her of her liberty without holding a hearing to justify that decision or providing pre-deprivation notice. Pet. Br. at 8–10. It is the illegality of the September 2025 arrest, and therefore also the illegality of the detention that resulted from that arrest, which requires immediate release. *See, e.g.*, *Gutierrez-Paniagua v. Mullin*, No. 26CV2512-GPC-JLB at*11 (S.D. Cal. Jun. 17, 2026) (holding that "Petitioner's release from custody is appropriate" as the remedy for failure to hold a pre-deprivation hearing); *Le v. LaRose*, No. 26CV1798-JES-VET (S.D. Cal. Mar. 30, 2026) (same); *Gergawi v. LaRose*, No. 25CV3352-JES-MMP (S.D. Cal. Dec. 23, 2025) (same).

If the Court were to order a post-deprivation bond hearing, that hearing should follow the requirements of *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), and *Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024). Because a *pre*-deprivation hearing is not a bond hearing under 8 U.S.C. § 1226(a), and because the government has deprived Petitioner of her liberty without *any* hearing for over ten months, immediate release is the appropriate remedy.

**2. The immigration court is currently unable or unwilling to provide Petitioner with a bond hearing that comports with Due Process.**

As this Court is aware, the Southern District of California is not alone in the nature and volume of habeas corpus petitions it has been required to decide in the last 18 months. Courts both within and outside the Southern District have found in many cases that bond hearings conducted under orders of the federal courts have failed to comply with the requirements of due process. *See, e.g.*, *Perez-Velasquez v. Bondi*, No. 26CV1759-GPC-DDL at *10–11(S.D. Cal. April 16, 2026) (holding that a post-order bond hearing was "legally and constitutionally deficient"); *Garcia Ortiz v. Henkey*, 26-CV43-BLW at *11 (D. Idaho Apr. 7, 2026) (granting a motion to enforce prior order after finding that post-order bond hearing constituted a "'rubber-stamp' denial [that was] a violation of due process and of [the] Court's previous Order"); *Zheng v. Rokosky*, 26-CV-1689 at *10 (D.N.J. Mar. 23, 2026) (ordering immediate release after finding that a post-order bond hearing "was not a fundamentally fair bond hearing" and noting "a serious question as to whether the constitutional guarantee of an impartial decisionmaker is being honored **in any case brought before an IJ**")(emphasis added); *Chavez Ochoa v. Mason*, No. 26-CV-130 at *4 (S.D.W.Va. Feb. 26, 2026) (ordering immediate release in part because "the Government would be unlikely to hold a timely bond hearing under procedures that comport with due process"). These decisions, many others like them, and evidence cited by the courts

ordering immediate release all support an order granting the remedy that Petitioner requests.

## Conclusion

Petitioner L.R.S. has been deprived of her liberty, without either a pre-deprivation or post-deprivation hearing, for over ten months. The government did not respond with any evidence suggesting it could prove that she is a danger or a flight risk such that her detention is justified but rather asks that the Court order her to prove that she is not at a bond hearing that will result in her having to pay for her freedom. Because there is no reason to believe that the agency that unlawfully arrested and detained Petitioner will respect her rights now, because the remedy should not leave her in a worse position than before the constitutional violation, and because release is the traditional remedy in a habeas corpus petition, Petitioner asks this Court to order her immediate release on the previous conditions of her Order of Release on Recognizance.

Date: July 20, 2026

/s/ Lauren Cusitello
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