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UNITED STATES DISTRICT COURT

Southern District of California

RUTILO LUCAS HERNANDEZ,

Petitioner,

v.

CHRISTOPHER J. LaROSE ; *et al.*,

Respondents.

Case Number: 3:26-cv-03959-BJC-DEB

PETITIONER'S TRAVERSE AND MEMORANDUM IN SUPPORT OF PETITION

Petitioner submits this Traverse and Memorandum to comply with the Court's order and the habeas corpus procedure and to expedite a decision on .

1225 v. 1226

As a threshold matter, petitioner agrees with respondents Response that conceding that the court will hold that petitioner is detained pursuant to 8 U.S.C. § 1226(a). There have been dozens, maybe hundreds, of decisions in the Southern District of California reaching this conclusion. Despite this wealth of established law in this District, the respondents continue to obstinately detain noncitizens on this unlawful basis—including petitioner. Now, is what is the proper remedy?

Remedy

In this case, the appropriate relief is an order that respondents immediately release petitioner from detention. Petitioner has lived in the USA since 2008. He supports two U.S. citizen minor children. Petitioner has been regularly employed. He has no criminal record. The circumstances of his detention smack of racial profiling. He was going to work and was stopped and detained for no apparent reason. He was not shown any warrant. Respondents know that petitioner was entitled to a bond hearing under 8 U.S.C. § 1226(a) but they are forcing him (and everyone else) to file habeas corpus petitions to compel compliance with the law. Finally, there is a growing trend or realization that the bond proceedings at the Otay Mesa Immigration Court are not fair. The EOIR system has been debased into a deportation machine. The immigration judges apparently know that they risk being fired if they do not perform their expected task of denying bonds. Respondents' goal is to oppress noncitizens into a forlorn state of hopelessness, despair, and exhaustion so that they will abandon all hope and their rights. This does not comport with our historical notions of justice and freedom in the United States.

The court should not reward this injustice. Accordingly, some courts are finding that immediate release, rather than a bond hearing, is the appropriate remedy. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) ("Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.");*Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) ("if

Petitioner is detained, he will already have suffered the injury he is now seeking to avoid"); *Domingo v. Kaiser*, Case No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner[ ] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.").

So, petitioner seeks the following remedy:

1. Respondents are ordered to immediately release Petitioner from custody.

2. The Court orders, prior to any re-detention of Petitioner, that Petitioner shall receive a hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) to determine whether detention is warranted. Respondents shall bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight.

DATED: 23 July 2026

Respectfully submitted,

/s/ *William Baker*
William Baker (157 906)
MORENO & ASSOCIATES