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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **JESUS HERRERA-MENDEZ,**

Case No.: 26-cv-02110-JO-MMP

11 Petitioner

12 v.

Judge: Hon. Jinsook Ohta

**PETITIONER'S TRAVERSE TO
RESPONDENT'S RETURN**

13 **CHRISTOPHER LAROSE, et al.,**

14 Respondents

15 **I. RESPONDENTS CONCEDE THAT PETITIONER IS DETAINED UNDER § 1226(a)**

16 Respondents acknowledge that Petitioner is detained pursuant to 8 U.S.C. § 1226(a) and
17 that he is entitled to a bond hearing. That concession resolves the central statutory dispute
18 presented in the Petition.

19 Petitioner, Jesus Herrera-Mendez, entered the United States without inspection on or
20 about October 1, 2023. He was not encountered by immigration authorities at or near the time of
21 entry and was never placed in inspection or expedited removal proceedings. Instead, Petitioner
22 resided and worked in the United States without incident for more than two years.
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1 On February 2, 2026, Petitioner was arrested by Immigration and Customs Enforcement
2 officers in the interior of the United States and transferred to the Otay Mesa Detention Center,
3 where he remains detained.

4 The Petition challenged DHS's reliance on INA § 1225(b) to justify detention without
5 access to a custody redetermination hearing. Respondents do not defend that position. Instead,
6 they acknowledge that detention must proceed, if at all, under INA § 1226(a), and do not oppose
7 an order directing a bond hearing.

8 Because Respondents no longer defend detention under § 1225(b), the central legal
9 premise underlying the Petition is effectively conceded. That concession confirms that the
10 detention framework initially applied to Petitioner cannot be sustained.

11 Respondents further request up to fourteen days to provide a bond hearing. That request
12 underscores the ongoing nature of the constitutional violation. Continued detention pending a
13 delayed hearing prolongs the deprivation of liberty and does not cure the unlawful detention
14 already imposed.

15 **II. THE GOVERNMENT'S POST-HOC RECLASSIFICATION DOES NOT CURE THE**
16 **UNLAWFUL DETENTION**

17 Although Respondents now acknowledge that Petitioner is detained under 8 U.S.C. §
18 1226(a), that concession does not resolve the constitutional injury presented in this case.

19 Habeas corpus addresses the legality of custody at the time it is imposed. A post-hoc
20 reclassification of detention authority does not retroactively cure an unlawful deprivation of
21 liberty. When an individual is detained without the procedures required by law, habeas relief
22 remains appropriate even if the government later changes its legal justification.

23 Here, Petitioner was taken into custody and detained without any individualized custody
24 determination, under a framework that Respondents no longer defend. Respondents now concede
25 that Petitioner's detention is governed by § 1226(a) and that he is entitled to a bond hearing. That
26 concession confirms that the procedures required by the governing statute were not provided at
27 the time detention was imposed.

1 The constitutional violation occurred at the moment Petitioner was detained without
2 access to those procedures. The government’s subsequent reclassification of detention authority
3 does not cure that violation. To the contrary, it confirms that Petitioner has already been
4 subjected to detention without the process that Respondents now acknowledge was required.

5 Nor do Respondents’ request for additional time to provide a bond hearing alter that
6 conclusion. Continued detention pending a delayed hearing compounds, rather than remedies, the
7 unlawful deprivation of liberty.

8 **III. PETITIONER’S CONTINUED DETENTION WITHOUT A CUSTODY**
9 **DETERMINATION VIOLATES DUE PROCESS**

10 Petitioner’s continued detention without access to a prompt and individualized custody
11 determination violates the Due Process Clause of the Fifth Amendment.

12 Freedom from physical restraint lies at the core of the liberty protected by the
13 Constitution. The Supreme Court has recognized that “[f]reedom from imprisonment—from
14 government custody, detention, or other forms of physical restraint—lies at the heart of the
15 liberty” protected by due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

16 Civil immigration detention is constitutionally permissible only when it bears a
17 reasonable relation to a legitimate governmental purpose, such as ensuring appearance at
18 proceedings or protecting the community. Where detention occurs without any individualized
19 determination of flight risk or danger, the risk of erroneous deprivation of liberty is substantial.

20 Here, Petitioner has been detained without any opportunity to challenge his custody
21 before a neutral decisionmaker. Respondents do not contend that Petitioner poses a danger to the
22 community or a flight risk, nor have they identified any individualized basis for his continued
23 detention. Instead, Petitioner remains detained solely because Respondents have not yet provided
24 the custody determination they now concede is required.

25 The Due Process Clause does not permit continued detention under these circumstances.
26 At a minimum, it requires a prompt and meaningful opportunity to contest detention before a
27

1 neutral adjudicator. Where, as here, no such process has been provided, continued detention
2 violates the Constitution

3 **IV. A POST-DETENTION BOND HEARING DOES NOT FULLY REMEDY THE**
4 **CONSTITUTIONAL VIOLATION**

5 Respondents suggest that the appropriate remedy is to provide Petitioner with a bond
6 hearing.

7 But a post-detention bond hearing cannot cure the constitutional injury where a person
8 has already been deprived of liberty without due process. The injury occurs at the moment
9 detention is imposed without the procedures required by law.

10 Even if a bond hearing later results in release, Petitioner will have already suffered the
11 very deprivation of liberty that due process is designed to prevent. A post-hoc custody
12 determination does not retroactively validate detention that was unlawful when imposed.

13 Nor do Respondents' request for additional time to provide a bond hearing alter that
14 conclusion. Continued detention pending a delayed hearing prolongs, rather than remedies, the
15 unlawful deprivation of liberty.

16 Where detention was imposed without the procedures required by law, continued
17 detention pending a future hearing cannot cure the original constitutional violation and instead
18 perpetuates it.

19 **V. IMMEDIATE RELEASE IS THE APPROPRIATE REMEDY**

20 Under these circumstances, the appropriate remedy is immediate release.

21 Respondents now concede that Petitioner is detained under 8 U.S.C. § 1226(a) and that
22 he is entitled to a bond hearing. That concession confirms that the detention framework initially
23 applied to Petitioner was legally incorrect and that Petitioner was detained without the
24 procedures required by law.

25 Because Petitioner has already been deprived of liberty without those procedures, habeas
26 relief is warranted. Habeas corpus exists to remedy unlawful detention—not to permit its
27 continuation while the government attempts to cure defects after the fact.

1 Where detention was imposed without lawful process, immediate release is an
2 appropriate remedy to restore the liberty that was unlawfully taken.

3 **VI. ALTERNATIVELY, THE COURT SHOULD ORDER A PROMPT**

4 **BOND HEARING**

5 If the Court determines that immediate release is not warranted, Petitioner respectfully
6 requests an order directing Respondents to provide a prompt custody redetermination hearing
7 before an Immigration Judge. Such hearing should occur under INA §1226(a) and must be
8 constitutionally adequate.

9 Accordingly, the government should bear the burden of establishing, by clear and
10 convincing evidence, that continued detention is necessary to prevent flight or danger to the
11 community.

12 **VII. CONCLUSION**

13 For the foregoing reasons, Respondents have failed to establish any lawful basis for
14 Petitioner's continued detention at the time it was imposed.

15 Respondents now concede that Petitioner is detained under 8 U.S.C. § 1226(a) and that
16 he is entitled to a bond hearing. That concession confirms that Petitioner was detained without
17 the procedures required by the governing statute.

18 Petitioner has therefore already suffered an unlawful deprivation of liberty. Under these
19 circumstances, Petitioner respectfully requests that the Court grant the Petition for Writ of
20 Habeas Corpus and order Petitioner's immediate release, or, in the alternative, order a prompt
21 and constitutionally adequate bond hearing under § 1226(a) at which the government bears the
22 burden of proving by clear and convincing evidence that continued detention is necessary.

23 In light of Respondents' concession that Petitioner is detained under 8 U.S.C. § 1226(a)
24 and their decision not to oppose the Petition, Petitioner respectfully requests that the Court
25 resolve the Petition on the papers and vacate the scheduled hearing. The issues are purely legal
26 and the material facts are undisputed.

27 Respectfully submitted,

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