

Alejandro Monsalve
CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave., Suite 9
Chula Vista, CA 91910
(619) 777-6796
Counsel for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARTA HERNANDEZ-CORTEZ

Petitioner

v.

CHRISTOPHER LAROSE, Senior Warden,
Otay Mesa Detention Center, *et al.*,

Case No.: 3:26-cv-02423-RBM-VET

**Judge: Hon.
Ruth Bermudez Montenegro**

**PETITIONER'S REPLY TO
RESPONDENT'S RETURN**

I. Respondents Concede That Petitioner Is Detained Under 8 U.S.C. § 1226(a)

Respondents now acknowledge that Petitioner is detained pursuant to 8 U.S.C. § 1226(a) and that he is entitled to a custody determination. That concession resolves the central statutory issue presented in the Petition.

The Petition challenged Petitioner's detention without access to the procedures required under § 1226(a). Respondents no longer defend detention under 8 U.S.C. § 1225(b) and instead concede that § 1226(a) governs custody.

That concession is dispositive of the legality of Petitioner's detention. It confirms that Petitioner was detained without the procedures required by the governing statutory framework.

1 In a habeas proceeding, where the government fails to justify detention under the correct legal
2 standard, the detention cannot be lawfully sustained.

3 Accordingly, Respondents' position establishes that the detention framework initially
4 applied to Petitioner was improper and that Petitioner has been deprived of liberty without the
5 process required by law.

6 **II. The Government's Post-Hoc Reclassification Does Not Cure the Unlawful**
7 **Detention**

8 Although Respondents now assert that Petitioner is detained under 8 U.S.C. § 1226(a),
9 that position does not cure the constitutional violation presented in this case.

10 Habeas corpus addresses the legality of detention at the time it is imposed. A post-hoc
11 reclassification of detention authority does not retroactively validate an unlawful deprivation of
12 liberty. When an individual is detained without the procedures required by law, the constitutional
13 injury is complete at the moment of detention.

14 Here, Petitioner was taken into custody without access to the procedures that
15 Respondents now acknowledge govern his detention. Respondents' current position therefore
16 confirms that Petitioner's detention was imposed under an improper legal framework and
17 without the process required by law.

18 That defect cannot be cured after the fact. Allowing the government to retroactively
19 justify detention by recharacterizing its legal basis would undermine the protections afforded by
20 the Due Process Clause and permit the continuation of unlawful custody.

21 **III. Petitioner Is Suffering Ongoing Irreparable Harm and Immediate Release**
22 **Is the Appropriate Remedy**

23 Petitioner is suffering ongoing and irreparable harm as a result of his continued unlawful
24 detention. The loss of physical liberty, even for minimal periods of time, constitutes irreparable
25 injury. Each additional day of detention compounds that harm and further entrenches an
26 unconstitutional restraint on Petitioner's freedom.

1 This harm is particularly acute here. Petitioner was previously released into the
2 community and lived at liberty for an extended period of time before being re-detained without
3 access to the procedures that Respondents now concede govern his custody. The deprivation of
4 liberty is therefore not only ongoing, but the direct result of detention imposed without the
5 process required by law.

6 Because the constitutional violation occurred at the time Petitioner was taken into
7 custody without those procedures, a later bond hearing does not fully remedy the injury. Habeas
8 corpus exists to secure release from unlawful custody, not to permit its continuation while the
9 government attempts to cure defects after the fact.

10 Under these circumstances, immediate release is the appropriate remedy. Restoring
11 Petitioner's liberty returns him to the position he occupied prior to the unlawful detention and
12 ensures that the government may not revoke that liberty without affording constitutionally
13 adequate process.

14 **IV. Relief Requested**

15 Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas
16 Corpus and order his immediate release from custody.

17 In the alternative, should the Court decline to order immediate release, Petitioner requests
18 that the Court order Respondents to provide a prompt custody redetermination hearing pursuant
19 to 8 U.S.C. § 1226(a). Such hearing should occur within five (5) days of the Court's order and
20 must be constitutionally adequate.

21 At that hearing, Respondents must bear the burden of establishing, by clear and
22 convincing evidence, that continued detention is necessary to prevent flight or danger to the
23 community. If such a hearing is not provided within that timeframe, Petitioner should be released
24 unless and until Respondents meet that burden.

25 Petitioner further requests such other and further relief as the Court deems just and
26 proper.

1 Respectfully submitted,

2 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

3 Alex Monsalve Law Firm, PC

4 240 Woodlawn Ave, Suite 9

5 Chula Vista, CA 91910

6 Phone: (619) 777-6796

7 Email: info@alexmonsalvelawfirm.com

8 Counsel for Petitioner

9 Dated: April 28, 2026