

1 Marcelo Gondim, SBN 271302  
2 Katherine Souza Pereira, SBN 355404  
3 Gondim Law Corp.  
4 1880 Century Park E, Suite 400  
5 Los Angeles, CA 90067  
6 Telephone: 323-282-7770  
7 Email: court@gondim-law.com  
8 Counsel for Petitioner

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MOISES DE OLIVEIRA PINHEIRO  
MORE,

*Petitioner,*

v.

CHRISTOPHER J. LAROSE, et al.,

*Respondents.*

Case No. 26-cv-03064-JO-AHG

**PETITIONER'S TRAVERSE AND  
REPLY TO RESPONDENTS'  
RETURN TO PETITION FOR  
WRIT OF HABEAS CORPUS**

**INTRODUCTION**

Petitioner Moises de Oliveira Pinheiro More, by and through undersigned counsel, respectfully submits this Traverse and Reply to Respondents' Return to Petition for Writ of Habeas Corpus, filed May 21, 2026 [ECF 4.] (“Return”).

Respondents do not contest the petition. The Return concedes the core legal premise on which the petition rests: that this Court and other judges of the Southern District of California have “repeatedly held” that 8 U.S.C. § 1226(a), not § 1225(b)(2), governs the detention of noncitizens like Petitioner who entered the

1 United States without inspection and were later apprehended in the interior. (Return  
2 at 2). Respondents cite fourteen decisions of this District rejecting the position taken  
3 by the immigration judge below, and they expressly state that they “do not oppose  
4 the petition” and “defer to the Court on the appropriate relief.” Id. at 2–3.  
5

6  
7 That concession is welcome but overdue. Petitioner has been confined at the  
8 Otay Mesa Detention Center since April 1, 2026, nearly two months, without an  
9 individualized bond determination, solely because the immigration judge applied  
10 *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado* (BIA  
11 2025), agency decisions that Respondents now effectively acknowledge cannot be  
12 squared with the law of this District. Respondents could have offered Petitioner a  
13 bond hearing at any point before this litigation began. They did not. Instead, they  
14 forced Petitioner to retain counsel, draft and file a federal habeas petition, and wait  
15 for this Court’s intervention to obtain the individualized custody determination to  
16 which he was always entitled.  
17  
18  
19  
20

21 Under these circumstances, the appropriate remedy is Petitioner’s immediate  
22 release from custody. In the alternative, the Court should order a bond hearing on  
23 an expedited basis, within seven days, not the fourteen Respondents request at  
24 which the government bears the burden of justifying continued detention by clear  
25 and convincing evidence and at which the immigration judge is barred from relying  
26 on *Matter of Q. Li* or *Matter of Yajure Hurtado*.  
27  
28

1  
2  
3 **ARGUMENT**

4 **I. RESPONDENTS CONCEDE THAT 8 U.S.C. § 1226(a)**  
5 **GOVERNS PETITIONER’S DETENTION AND THAT *MATTER OF Q. LI***  
6 **AND *MATTER OF YAJURE HURTADO* CANNOT BE APPLIED HERE.**

7 Respondents’ Return is, in substance, a concession. It acknowledges that “the  
8 district court has held that 8 U.S.C. § 1226(a) governs the detention of noncitizens  
9 who entered the United States without inspection,” and that the *Matter of Q. Li*  
10 position urged by the immigration judge has been “repeatedly” rejected by judges  
11 of this District. Return at 2. The Return collects fourteen examples:  
12

13 *Arias Torres v. LaRose*, No. 25-cv-2347-WQH-DDL; *Martinez Lopez v.*  
14 *LaRose*, No. 25-cv-2415-RBM-MMP; *Beltran v. LaRose*, No. 25-cv-2455-AGS-  
15 AHG; *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v.*  
16 *LaRose*, No. 25-cv-2516-AGS-MMP; *Lucas-Miguel v. LaRose*, No. 25-cv-2587-  
17 LL-MMP; *Vasquez-Diaz v. LaRose*, No. 25-cv-2629-CAB-DDL; *Cardoso v.*  
18 *LaRose*, No. 25-cv-2664-LL-DDL; *Maceda-Garcia v. LaRose*, No. 25-cv-2700-  
19 DMS-VET; *A.S. v. LaRose*, No. 25-cv-2734-AGS-AHG; *Prieto-Cordova v. LaRose*,  
20 No. 25-cv-2789-BAS-DDL; *Lagarda-Vega v. LaRose*, No. 25-cv-2841-CAB-  
21 AHG; *Nayyer v. LaRose*, No. 25-cv-2900-RBM-MMP; and *Amaya v. LaRose*, No.  
22 25-cv-2978-JO-AHG.  
23  
24  
25  
26  
27  
28

1 Respondents do not attempt to distinguish any of these decisions, nor do they  
2 renew the § 1225(b)(2) argument that the immigration judge accepted below. They  
3 state plainly that they “do not oppose the petition” and “defer to the Court on the  
4 appropriate relief.” Return at 3.  
5

6  
7 The concession resolves the merits. Petitioner entered the United States in  
8 April 2024, lived in the community for nearly two years, and was apprehended in  
9 the interior. He is a § 1226(a) detainee, entitled to an individualized bond hearing  
10 before an immigration judge with jurisdiction. The immigration judge’s April 28,  
11 2026, ruling, denying jurisdiction under *Matter of Q. Li* and *Matter of Yajure*  
12 *Hurtado* was therefore legally erroneous, and Petitioner’s continued detention  
13 pursuant to that ruling is unlawful.  
14  
15

16  
17 **II. THE APPROPRIATE REMEDY IS IMMEDIATE RELEASE.**

18 Where, as here, the government has unlawfully detained a noncitizen for  
19 nearly two months and now concedes the legal error, the remedy that most fully  
20 vindicates the constitutional violation is release, not a further hearing. Three  
21 considerations point in the same direction.  
22

23 **A. Respondents’ Pattern of Litigation Has Made a Bond Hearing an**  
24 **Inadequate Remedy Standing Alone.**

25 By Respondents’ own count, judges of the Southern District of California  
26 have rejected the *Matter of Q. Li / Matter of Yajure Hurtado* position at least  
27  
28

1 fourteen times. Those rulings were publicly available when Petitioner’s custody  
2 redetermination was heard on April 28, 2026. Yet the immigration judge denied  
3 jurisdiction anyway, and Respondents continued to detain Petitioner under that  
4 ruling until this habeas petition forced the issue. That history matters because it  
5 shows that the denial of a bond hearing here was not an isolated mistake cured by a  
6 belated concession; it was the predictable product of a recurring litigation posture  
7 that has repeatedly required judicial intervention. See, e.g., *Garcia v. Noem*, 803 F.  
8 Supp. 3d 1064 (S.D. Cal. 2025).

9  
10  
11  
12 Respondents’ “non-opposition” is therefore not a neutral procedural posture.  
13  
14 It is a post-filing acknowledgment that ICE and EOIR continue to apply at Otay  
15 Mesa a detention theory that judges of this District have repeatedly rejected. The  
16 Court should not accept Respondents’ invitation to remand for the very hearing they  
17 could have provided before this case was filed. Cf. *Singh v. Holder*, 638 F.3d 1196,  
18 1208 (9th Cir. 2011) (government’s burden in prolonged immigration detention  
19 cases is heightened where delay is attributable to the government); 28 U.S.C. § 2243  
20  
21 (court shall “dispose of the matter as law and justice require”).

22  
23  
24 That recurring posture also imposes unnecessary burdens on the federal  
25 courts and the parties. If Respondents continue to withhold compliance with settled  
26 law in this District unless and until detainees file habeas petitions, then  
27 individualized custody determinations are being obtained only through repetitive  
28

1 federal litigation rather than through routine adherence to governing law at the  
2 agency level. That practice forces detained noncitizens to retain counsel and incur  
3 avoidable litigation expenses, compels the government to defend petitions it  
4 ultimately does not oppose, and requires the Court to expend resources to order  
5 relief that should have been afforded without judicial intervention. The pattern  
6 therefore reinforces that a simple remand for a bond hearing, standing alone, is not  
7 an adequate remedy here. See 28 U.S.C. § 2243; *Zadvydas v. Davis*, 533 U.S. 678,  
8 687–88, 690 (2001).

9  
10  
11  
12 **B. Petitioner’s Liberty Interest, Now Nearly Two Months Deep, Cannot**  
13 **Be Vindicated by More Process Alone.**

14 Freedom from physical restraint “lies at the core of the liberty protected by  
15 the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Petitioner  
16 has now been detained since April 1, 2026. Every additional day of confinement  
17 compounds the constitutional injury that the immigration judge’s unlawful  
18 jurisdictional ruling set in motion. Where the deprivation is ongoing and the legal  
19 basis for it has collapsed, the proper response is to end the deprivation, not to  
20 schedule further proceedings about it. See *Zadvydas v. Davis*, 533 U.S. 678, 690  
21 (2001) (immigration detention must be justified by a “sufficiently strong special  
22 justification”); *Hensley v. Municipal Court*, 411 U.S. 345, 349 (1973) (habeas has  
23 long served as a means of securing release from unlawful restraint); *Rodriguez Diaz*  
24  
25  
26  
27  
28

1 v. *Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022) (applying *Mathews v. Eldridge*  
2 to immigration detention).  
3

4 Petitioner has no criminal convictions of any kind. He lived openly in the  
5 community for nearly two years before his arrest, with no indication of flight. He  
6 has United States citizen children who depend on him. Respondents have never in  
7 the immigration proceedings, in the Return, or anywhere else, articulated a  
8 particularized danger or flight-risk justification for his confinement. On this record,  
9 the government cannot carry the clear-and-convincing burden that prolonged civil  
10 detention requires. See *Singh v. Holder*, 638 F.3d at 1203; *Hernandez v. Sessions*,  
11 872 F.3d 976, 990–91 (9th Cir. 2017) (ability-to-pay and alternatives to detention  
12 must be considered).  
13  
14  
15

16 **C. This Court Has Authority Under 28 U.S.C. § 2241 to Order Release**  
17 **Directly.**

18 Section 2241 empowers a district court to grant the writ and “dispose of the  
19 matter as law and justice require.” 28 U.S.C. § 2243. That authority includes  
20 ordering release where, as here, continued detention is unlawful and a remand to  
21 the agency that committed the legal error would simply prolong the violation. See  
22 *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (describing habeas as an attack on  
23 unlawful custody); *Singh v. Holder*, 638 F.3d at 1208; *Diouf v. Napolitano*, 634  
24  
25  
26  
27  
28

1 F.3d 1081, 1091–92 (9th Cir. 2011) (recognizing district court’s authority to order  
2 release in immigration detention habeas cases).  
3

4 Release in this posture is not extraordinary. Courts of this District have  
5 ordered release where the government failed to identify a statutory basis for  
6 detention or where the government conceded legal error. See, e.g., *Garcia v. Noem*,  
7 803 F. Supp. 3d 1064 (S.D. Cal. 2025). Petitioner asks for the same disposition here.  
8

9 Recent California decisions confirm that immediate release is an available  
10 and appropriate habeas remedy where detention lacks a lawful basis or where the  
11 government’s position collapses on review. In this District, Judge Ohta granted  
12 habeas relief in *Milis v. Noem*, No. 3:26-cv-01823-JO-BLM (S.D. Cal. Apr. 8,  
13 2026), and Judge Bermudez Montenegro did the same in *Diaz Linares v. LaRose*,  
14 No. 3:26-cv-01507-RBM-AHG (S.D. Cal. May 19, 2026). See also *Noori v. LaRose*,  
15 No. 25-cv-1824-GPC-MSB (S.D. Cal. Oct. 1, 2025) (ordering immediate release),  
16 and *Bautista-Santiago v. Noem*, No. 25-cv-03209-DMS-DDL (S.D. Cal. 2025)  
17 (granting habeas relief on the unlawful-detention claim). Other California district  
18 courts have likewise ordered immediate release in analogous detention habeas cases.  
19 See, e.g., *Altin v. Chestnut*, No. 1:26-cv-00792-DC-CSK (E.D. Cal. Feb. 5, 2026);  
20 *Montenegro Martinez v. Warden, California City Correctional Center*, No. 2:26-  
21 cv-01334-KES-SKO (E.D. Cal. Apr. 9, 2026).  
22  
23  
24  
25  
26  
27  
28

1                   **III. IN THE ALTERNATIVE, ANY BOND HEARING MUST**  
2                   **BE HELD WITHIN SEVEN DAYS, WITH THE BURDEN ON THE**  
3                   **GOVERNMENT BY CLEAR AND CONVINCING EVIDENCE.**

4                   If the Court declines to order immediate release, it should order a bond  
5 hearing on substantially shorter timing than Respondents propose and with clear  
6 procedural protections.

7  
8                   First, fourteen days is too long. Petitioner has already been detained without  
9 a constitutionally adequate hearing for nearly two months. Respondents offer no  
10 reason, logistical, evidentiary, or otherwise, that a hearing cannot be held within  
11 seven days. Otay Mesa's immigration court hears bond motions on a regular  
12 calendar, and Respondents have known of Petitioner's claim since the petition was  
13 filed. Each additional week of detention is, on this record, a week of unjustified  
14 confinement.

15  
16  
17                   Second, the government must bear the burden of proof by clear and  
18 convincing evidence. The Ninth Circuit's decision in *Singh v. Holder*, 638 F.3d  
19 1196 (9th Cir. 2011), squarely holds that in prolonged immigration detention bond  
20 hearings, "the government must prove by clear and convincing evidence that an  
21 alien is a flight risk or a danger to the community to justify denial of bond." *Id.* at  
22 1203. That standard applies here. Petitioner has been detained for nearly sixty days  
23 without an individualized determination, his detention is civil, and the deprivation  
24  
25  
26  
27  
28

1 of liberty implicates core due process interests. See *Hernandez v. Sessions*, 872 F.3d  
2 at 990–91.

3  
4 Third, the immigration judge must consider Petitioner’s ability to pay any  
5 bond set and the availability of alternatives to detention, consistent with *Hernandez*  
6 *v. Sessions*, 872 F.3d at 990–91. A bond that Petitioner cannot pay is, for him, the  
7 equivalent of an order of continued detention, and the Constitution does not permit  
8 detention by economic accident.  
9

10  
11 Fourth, the immigration judge must be expressly directed not to rely on  
12 *Matter of Q. Li* or *Matter of Yajure Hurtado* as a basis to deny jurisdiction or  
13 otherwise refuse to conduct the hearing. Absent that direction, the same legal error  
14 that produced the April 28, 2026 ruling can recur, and Petitioner will be back before  
15 this Court on a second habeas petition raising precisely the same issues.  
16

17  
18 **CONCLUSION AND PRAYER FOR RELIEF**

19 For the reasons stated above and in the Petition, Petitioner respectfully  
20 requests that this Court:  
21

22 Because Respondents maintained an unlawful detention posture already  
23 rejected repeatedly in this District and conceded the petition’s core legal premise  
24 only after Petitioner was forced to seek habeas relief, an award of fees and costs  
25 under the Equal Access to Justice Act is also warranted. See 28 U.S.C. § 2412(d).  
26

- 27  
28 1. Grant the Petition for Writ of Habeas Corpus;

1           2.     Order Petitioner’s immediate release from the custody of U.S.  
2 Immigration and Customs Enforcement, subject to such reasonable conditions of  
3 supervision as the Court deems appropriate;  
4

5           3.     In the alternative, order Respondents to provide Petitioner with an  
6 individualized bond hearing before an immigration judge within seven (7) days of  
7 this Court’s order, at which (a) the government bears the burden of proving by clear  
8 and convincing evidence that Petitioner is a flight risk or a danger to the community;  
9 (b) the immigration judge considers Petitioner’s ability to pay and alternatives to  
10 detention; and (c) the immigration judge is barred from relying on *Matter of Q. Li*,  
11 29 I&N Dec. 66 (BIA 2025), or *Matter of Yajure Hurtado* (BIA 2025) as a basis to  
12 deny jurisdiction or otherwise refuse to conduct the hearing;  
13  
14  
15

16           4.     Declare that 8 U.S.C. § 1226(a), not § 1225(b)(2), governs Petitioner’s  
17 detention;  
18

19           5.     Award Petitioner his reasonable attorneys’ fees and costs under the  
20 Equal Access to Justice Act, 28 U.S.C. § 2412, because Respondents’ position was  
21 not substantially justified in light of the repeated rulings of this District rejecting  
22 the detention theory applied below and Respondents’ post-filing concession of the  
23 petition’s core legal premise; and  
24  
25

26           6.     Grant such other and further relief as the Court deems just and proper.  
27  
28

1 Dated: May 26, 2026

2 Respectfully submitted,

3  
4 /s/ Marcelo Gondim

5 Marcelo Gondim (SBN 271302)

6 Katherine Souza Pereira (SBN 355404)

7 GONDIM LAW CORP.

8 1880 Century Park East, Suite 400

9 Los Angeles, CA 90067

10 Telephone: (323) 282-7770

11 Email: court@gondim-law.com

12 Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2026, I electronically filed the foregoing PETITIONER'S TRAVERSE AND REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS by using the CM/ECF system, in accordance with U.S. District Court for the Southern District of California's CM/ECF Administrative Procedures and Local Rules. Notice of this filing will be sent out to all parties by operation of the Court's electronic filing system.

/s/ Marcelo Gondim

Marcelo Gondim (SBN 271302)  
Gondim Law Corp.  
1880 Century Park East, Suite 400  
Los Angeles, CA 90067  
Telephone: 323-282-777  
Email: court@gondim-law.com  
*Attorney for Petitioner*