

Prerna Preshika Lal
SBN: 354786
Lal Legal APLC
2001 Addison St STE 300
Berkeley CA 94704
(800) 552-5616
prerna@lallegal.com

Attorney for Petitioners

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDUARDO MEJIA-TEXTA


Civil Action No.: 26-cv-03646-RBM-JLB

JESUS RAUL TEXTA-LOPEZ


Petitioners,

v.

CHRISTOPHER LAROSE, Warden of Otay Mesa Detention Center; **KENNETH C. SMITH**, San Diego Field Director, U.S. Immigration and Customs Enforcement; **TODD LYONS**, in his official capacity as Acting Director of Immigration and Customs Enforcement; **MARKWAYNE MULLIN**, U.S. Department of Homeland Security; and **TODD BLANCHE**, Acting U.S. Attorney General.

Respondents.

PETITIONERS' REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents have submitted a two-page response that fails to engage, substantively or procedurally, with the Petitions' operative claims. Rather than defending the legality of Petitioners' arrests, the propriety of their continued detention, or the Immigration Judge's erroneous denial of bond hearings, Respondents have constructed a Fourth Amendment argument that bears no relation to the pleadings and then proceed to refute it. This Court should not entertain arguments that address claims not asserted.

On page two, Respondents make the more consequential concession that Petitioners are entitled to bond hearings under 8 U.S.C. § 1226(a). This acknowledgment effectively abandons the legal theory under which Petitioners have been detained. *Benitez v. Francis*, 795 F.Supp.3d 475, 485 (S.D.N.Y. 2025) ("a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226"). The remaining dispute is therefore one of remedy: whether a post hoc bond hearing can cure months of unlawful detention that Respondents have never sought to justify under the Fifth Amendment or any governing statute. It cannot.

ARGUMENT

I. RESPONDENTS SET UP A STRAWMAN THAT MISCHARACTERIZES THE PETITION.

Federal courts "need not manufacture arguments" that a party elects not to make. *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994). "Judges are not like

1 pigs, hunting for truffles buried in briefs.” *See Indep. Towers of Wash. v. Wash.*, 350
2 F.3d 925, 929 (9th Cir. 2003) (quoting *United States v. Dunkel*, 927 F.2d 955, 956
3 (7th Cir. 1991)); *Nicholas Acoustics & Specialty Co. v. H & M Constr. Co., Inc.*, 695
4 F.2d 839, 846-47 (5th Cir. 1983) (“Judges are not ferrets!”).

6 Respondents insist that Petitioners assert “claims under the Fourth
7 Amendment.” ECF No. 6, at 1. The Petitions assert no such thing. Petitioners allege:
8 (1) violation of Fifth Amendment procedural due process; (2) violation of Fifth
9 Amendment substantive due process; (3) violation of 8 U.S.C. § 1226(a); (4)
10 detention under the wrong statute; and (5) an APA claim of unlawful agency
11 action. *See* ECF No. 1. ¶¶ 64–93. Not a single count invokes the Fourth Amendment
12 or seeks suppression of evidence. Petitioners do not want to exclude a piece of paper
13 from a removal hearing. They want to be released from a detention facility where
14 they have been unlawfully detained for months.

18 Respondents answer a question no one asked and refute a claim no one made.
19 This Court is not obliged to chase red herrings or make Respondents’ arguments for
20 them.

22 **II. RESPONDENTS CONCEDE THE ENTIRETY OF THE PETITION.**

23 “A bare assertion does not preserve a claim, and a party cannot manufacture
24 a claim for an opponent and then refute it.” *Greenwood*, 28 F.3d at 977. Respondents
25 concede **all** claims made in the Petitions through their non-opposition. They do not
26 defend the legality of Petitioners’ arrest and detention under the Fifth Amendment.
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1 They do not dispute that Petitioners were arrested and detained unlawfully in
2 violation of 8 U.S.C. § 1226(a), and fail to produce the pre-arrest warrant or invoke
3 8 U.S.C. § 1357(a)(2) exceptions. They cannot and do not argue that Petitioners are
4 dangers or flight risks and “likely to escape.” They also fail to respond to the APA
5 and *Accardi* claims. Finally, they state that they “do not oppose an order from this
6 Court directing a bond hearing...pursuant to 8 U.S.C. § 1226(a).” ECF No. 6 at 2.
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9 Respondents cannot manufacture a Fourth Amendment claim for Petitioners
10 and then refute it while ignoring the actual claims in the Petitions. Having failed to
11 respond to the Petitions’ claims, Respondents have conceded them. *See Lou v. JP*
12 *Morgan Chase Bank N.A.*, No. 3:17-cv-04157-WHO, 2018 WL 1070598, at *2
13 (N.D. Cal. Feb. 26, 2018) (“Courts have found that failure to oppose an argument
14 serves as a concession.”); *Resnick v. Hyundai Motor Am., Inc.*, 2017 WL 1531192
15 at *22, (C.D. Cal. Apr. 13, 2017) (“Failure to oppose an argument...constitutes
16 waiver of that argument.”)
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19 **III. A POST-ARREST WARRANT OR HEARING CANNOT JUSTIFY**
20 **UNLAWFUL ARREST AND DETENTION.**
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22 Respondents’ concession that Petitioners are entitled to a bond hearing does
23 not cabin the relief this Court may order. That concession establishes a floor, not a
24 ceiling. A belated hearing cannot cure what was unlawful from its inception. In their
25 Return, Respondents have identified **no** statutory authority for Petitioners’ detention
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1 because none exists. Where the government lacks any lawful basis for custody, the
2 remedy is immediate release, not a hearing that comes months too late.

3 **A. Respondents Cannot Identify Any Statutory Authority for Petitioners’**
4 **Detention.**
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6 Congress provided three statutory sources of authority for immigration
7 detention pending removal proceedings: § 1226(a), § 1226(c), and § 1225(b). None
8 applies here.
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10 *First*, detention under Section 1226(a) requires a warrant. *See* ECF No. 1 ¶¶
11 45-54. Respondents have conceded this through their failure to oppose and their
12 inability to produce one. The I-213 form contains no warrant number and no
13 indication that a warrant was obtained **prior** to the stop. *See* ECF No. 1 ¶ 20; Exh.
14 3.
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17 The exception for warrantless arrests under 8 U.S.C. § 1357(a)(2) does not
18 apply. *See* ECF No. 1 ¶¶ 55–63. That statute permits a warrantless arrest only where
19 the officer has “reason to believe” the noncitizen “is likely to escape before a warrant
20 can be obtained.” Prior to the unlawful detention, Petitioners had lived at the same
21 address for over twenty-five years, supported their family members, and were
22 driving to work when they were stopped and detained. *See* ECF No. 1 ¶¶ 14-17, 21-
23 22. There was no probable cause to believe they were “likely to escape,” and
24 Respondents have forfeited this claim through silence. Section 1226(a) therefore
25 cannot serve as the basis for custody.
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1 *Second*, detention under Section 1226(c) requires a qualifying criminal
2 conviction. Petitioners have no offenses that trigger mandatory detention under §
3 1226(c). Respondents do not argue otherwise.

4
5 Finally, Section 1225(b) applies to “applicants for admission.” The Supreme
6 Court has held that § 1226 governs detention of noncitizens already inside the
7 country. *Jennings v. Rodriguez*, 583 U.S. 281, 287-89 (2018). Courts in this District
8 have repeatedly rejected the government’s attempt to apply § 1225(b)(2) to long-
9 term interior residents. *See, e.g., Carrillo Gregorio v. LaRose*, No. 25-cv-03322-
10 BAS-BJW, slip op. at 4-7 (S.D. Cal. Dec. 17, 2025). Petitioners are not applicants
11 for admission. They have resided in the United States for over twenty-five years.
12 They did not present themselves at the border seeking admission. They were arrested
13 in the interior while driving to work. *See* ECF No. 1 ¶¶ 14, 22.

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15 Respondents have therefore failed to identify *any* statutory authority for
16 Petitioners’ arrest or detention. That is not a technicality. It is a jurisdictional failure.
17 “Where the record shows Respondents have not identified a valid statutory basis for
18 detention in the first place, the remedy is not to supply one through further
19 proceedings.” *Yociris P. v. Bondi*, 2026 WL 327937, at *3 (D. Minn. Feb. 8, 2026).
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23 **B. A Bond Hearing Cannot Cure What Was Unlawful from the Start.**

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25 Courts in this Circuit have repeatedly held that where arrest and detention are
26 unlawful from their inception, particularly where no pre-arrest warrant exists,
27 immediate release is the remedy. *See Pedraza v. LaRose*, No. 26-cv-2697-LL-MSB,
28

1 slip op. at 2 (S.D. Cal. May 27, 2026) (ordering immediate release where arrest was
2 warrantless); *Silvestre-Mendoza v. Noem*, No. 3:25-cv-03206-RBM-DDL, slip op.
3 at 3-4 (S.D. Cal. Dec. 8, 2025) (“a bond hearing ‘misapprehends the purpose of a
4 pre-detention hearing’”); *Urias v. Semaia*, No. 5:26-cv-02753-DTB, slip op. at 13-
5 14 (C.D. Cal. June 10, 2026) (“Given the violation of Petitioner’s due process rights,
6 the Court further concludes that Petitioner’s release is necessary to return him to the
7 status quo”); *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL
8 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (finding “[i]ssuance of a warrant is a
9 necessary condition to justify discretionary detention under section 1226(a)” and
10 ordering immediate release); *V.M. v. Albarran*, No. 1:26-cv-01280-TLN-DMC, slip
11 op. at 5 (E.D. Cal. Mar. 5, 2026) (“Petitioner’s release is necessary to return him to
12 the status quo.”).

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17 Respondents cannot arrest without a warrant, detain for months without
18 statutory authority, and then, when challenged, offer a hearing they denied from the
19 beginning. That is not a remedy. It is a mulligan. The Constitution does not give the
20 government do-overs. The only appropriate remedy is immediate release. *V.M. v.*
21 *Albarran*, slip op. at 5.

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24 **IV. RESPONDENTS’ JURISDICTIONAL AND EXHAUSTION**
25 **ARGUMENTS ARE RED HERRINGS.**

26 Respondents argue that this Court lacks jurisdiction and that Petitioners have
27 failed to exhaust their claims before the Board of Immigration Appeals (“BIA”).
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1 ECF No. 6 at 1-2. This Court has repeatedly rejected these same arguments. *See*
2 *Faizyan v. Casey*, No. 3:25-cv-02884-RBM-JLB, 2025 WL 3208844 at *3-4 (S.D.
3 Cal. Nov. 17, 2025); *Malysenko v. Warden*, No. 3:26-cv-00069-RBM-SBC, slip op.
4 at 3 (S.D. Cal. Jan. 30, 2026); *Chenghong Xie v. Larose*, No. 3:26-cv-01116-RBM-
5 MMP, 2026 WL 836351 at *4 n.1 (S.D. Cal. Mar. 26, 2026). The Court should do
6 so again.
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9 This Court has jurisdiction under 28 U.S.C. § 2241. As this Court has
10 explained, 8 U.S.C. § 1252(g) applies only to three discrete actions: “commence
11 proceedings, adjudicate cases, or execute removal orders.” *Faizyan*, slip op. at 3
12 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)).
13 Petitioners challenge none of these. They challenge the legality of their
14 detention. *Id.* (“Petitioner does not challenge the decision to commence removal
15 proceedings or any act to execute a removal order.”). Section 1252(b)(9) does not
16 bar review either. As this Court noted in *Faizyan*, “cramming judicial review of
17 those questions into the review of final removal orders would be absurd.” *Id.* at 3–4
18 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018)).
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22 As Petitioners have already established, exhaustion is futile where the BIA is
23 “obligated to apply the binding precedent of *Matter of Yajure-Hurtado*.” *Faizyan*,
24 slip op. at 4 (quoting *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025
25 WL 2998361, at *3–4 (S.D. Cal. Oct. 24, 2025)). Here, the IJ denied bond solely
26 because *Yajure-Hurtado* applied. ECF No 1. ¶ 28. Requiring exhaustion before a
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1 body bound by that precedent would be an empty formality. Moreover, the BIA lacks
2 jurisdiction over constitutional claims. *Matter of G-K-*, 26 I&N Dec. 88, 96–97 (BIA
3 2013); *Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013).

4
5 Finally, Respondents’ concession that they “do not oppose” a bond hearing is
6 a tacit acknowledgment of jurisdiction. A party cannot simultaneously argue the
7 Court lacks jurisdiction and consent to the Court exercising it. The Court should
8 reject these arguments for the same reasons it has in prior cases.
9

10 CONCLUSION

11 Respondents have not defended the legality of Petitioners’ arrests, their
12 continued detention, or the Immigration Judge’s denial of an individualized custody
13 determination. Instead, they concede that Petitioners are entitled to relief under 8
14 U.S.C. § 1226(a) while offering no response to Petitioners’ principal constitutional
15 and statutory arguments. Because a post hoc bond hearing cannot remedy an arrest
16 and detention that were unlawful from their inception, the Court should grant the
17 Petitions and order Petitioners’ immediate release.
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21 In the alternative, if the Court determines that a bond hearing is the appropriate
22 remedy, it should order Respondents to provide a constitutionally adequate hearing
23 within seven days before a neutral adjudicator, with Respondents bearing the burden
24 of proving by clear and convincing evidence that Petitioners’ continued detention is
25 justified. The hearing must include express instructions that Respondents shall not
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1 deny bond on the basis that Petitioners are detained under § 1225(b)(2), but must
2 instead consider alternatives to detention, including conditional release.

3 Date: July 5, 2026

Respectfully Submitted,

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5 /s/ Prerna P. Lal

6 Prerna Preshika Lal

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9 *Attorney for Petitioners*
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CERTIFICATE OF SERVICE

I, Prerna Preshika Lal, declare that I electronically filed the foregoing document with the Clerk of Court via CM/ECF on July 5, 2026 which will serve electronic notice upon all counsel of record listed in the ECF docket.

Date: July 5, 2026

Respectfully Submitted,

/s/ Prerna P. Lal
Prerna Preshika Lal
SBN: 354786
Lal Legal APLC
2001 Addison St STE 300
Berkeley CA 94704
(800) 552-5616
prerna@lallegal.com

Attorney for Petitioners