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11 UNITED STATES DISTRICT COURT
12
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14
15 SACRAMENTO DIVISION

16 John DOE,

17 Petitioner-Plaintiff,

18 v.

19 MOISES BECERRA, Acting Field Office
20 Director of Sacramento Office of Detention and
21 Removal, U.S. Immigrations and Customs
22 Enforcement; U.S. Department of Homeland
23 Security;

24 Caleb VITELLO, Acting Director, Immigration
25 and Customs Enforcement, U.S. Department of
26 Homeland Security;

27 Kristi NOEM, in her Official Capacity,
28 Secretary, U.S. Department of Homeland
Security; and

Pam BONDI, in her Official Capacity, Attorney
General of the United States;

Tonya ANDREWS, in her Official Capacity,
Facility Administrator at Golden State Annex,
McFarland, California;

Respondents-Defendants.

Case No. 2:25-cv-00647-DJC-DMC

**MOTION TO ENFORCE
PRELIMINARY INJUNCTION
ORDER**

**POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO
ENFORCE PRELIMINARY
INJUNCTION ORDER**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

Petitioner hereby moves this Court for an order enforcing the preliminary injunction issued by this Court on March 3, 2025, and ordering his immediate release from custody.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Johnny Sinodis with Accompanying Exhibits in Support of Petitioner’s Motion to Enforce Preliminary Injunction. As set forth in the Points and Authorities in support of this Motion, Petitioner establishes that Respondents failed to comply with the Court’s order to provide a hearing before an Immigration Judge at which the government bore the burden to demonstrate by clear and convincing evidence that he is either a flight risk or a danger to the community. Because Respondents failed to provide a constitutionally compliant hearing by March 10, 2025, as ordered by this Court, Petitioner respectfully submits that he is entitled to immediate release.

WHEREFORE, Petitioner prays that this Court grant his Motion to enforce the preliminary injunction issued by this Court on March 3, 2025, and order his immediate release from unlawful detention.

Dated: April 3, 2025

Respectfully Submitted

/s/Johnny Sinodis

Johnny Sinodis

Oona Cahill

Attorneys for Petitioner-Plaintiff

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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Mr. Doe, by and through undersigned counsel, hereby files this
3 motion to enforce the Court’s preliminary injunction Order issued on March 3, 2025. *See* Dkt. 19
4 (Preliminary Injunction Order). In that order, the Court found, *inter alia*, that (1) Respondents
5 violated Petitioner’s rights when they re-arrested him without first providing a pre-deprivation
6 hearing as to the necessity of his reincarceration and (2) Petitioner was entitled to a hearing
7 before an Immigration Judge (IJ) to determine whether his continued detention is warranted
8 where the Government would bear the burden of establishing, by clear and convincing evidence,
9 that Petitioner poses a danger to the community or a risk of flight. *Id.* at 4, 14-15. The Court
10 ordered Respondents to provide Petitioner “with such a hearing on or before March 10, 2025, if
11 no hearing occurs by this time, Petitioner shall be released from Respondents’ custody.” *Id.*
12 Because Respondents utterly failed to comply with this Court’s Order, Petitioner must be
13 released from custody.

14 On March 5, 2025, Respondents scheduled Petitioner for a bond hearing on March 10,
15 2025. In advance of the hearing, the U.S. Department of Homeland Security (“DHS”),
16 Immigration and Customs Enforcement (“ICE”) refiled all of the same evidence that it
17 previously submitted to the IJ at the Sacramento Immigration Court on March 7, 2024—evidence
18 that ICE had received more than one year earlier, in February 2023. Dkt. 8-1 at ¶ 15 (stating ICE
19 learned of the Red Notice and accompanying criminal allegations in February 2023). In
20 response, Petitioner submitted over 600 pages of evidence in support of his motion for bond.
21 That evidence included: (1) affidavits from three expert witnesses regarding the unreliability of
22 the INTERPOL Red Notice and the well-known practice of ██████ police filing false criminal
23 charges against political dissidents like Petitioner; (2) evidence of Petitioner’s own persecution
24 and torture in ██████, as well as the unlawful arrests, detentions, and torture of his mother, brother,
25 sister, and brother-in-law; and (3) country conditions reports from the U.S. Department of State
26 and various non-governmental agencies finding that ██████ regularly targets and harms individuals
27 like Petitioner. *See* Second Declaration of Johnny Sinodis (“Second Sinodis Decl.”) at Exh. B
28 (Petitioner’s Document List and Evidence in Support), Exh. C (Country Conditions Evidence),

1 Exh. D (Expert Reports). Petitioner further filed a List of Witnesses with the IJ so that testimony
2 could be presented regarding the unreliability of ICE’s evidence and its inability to carry its
3 burden. *Id.* at Exh. E (List of Witnesses).

4 On March 10, 2025, Petitioner appeared for the bond hearing. Without explanation, the IJ
5 refused to allow Petitioner to conduct any cross-examination of the individuals who authored the
6 documents presented by ICE. The IJ further declined to hear any testimony from Petitioner, his
7 experts, or any other witnesses. *Id.* at Exh. H (Transcript of Bond Hearing) at 11:18-11:21.

8 Petitioner, through counsel, repeatedly requested the full-blown evidentiary hearing to which he
9 was entitled by order of this Court, explaining that he and his witnesses were prepared to present
10 testimony rebutting the unreliable evidence submitted by ICE in its attempt to establish the
11 necessity of Petitioner’s incarceration. Undersigned counsel further highlighted that ICE had
12 previously chosen not to take Petitioner into custody despite knowing about the INTERPOL Red
13 Notice and criminal cases in  since February 2023. *Id.* But none of this mattered. The IJ,
14 without reason or explanation for her decision, stated that ICE had met its burden. *Id.* Following
15 the hearing, the IJ issued a one-sentence, four-word order stating, in its entirety: “Denied,
16 because Danger/Flight.” *Id.* at Exh. I (IJ Decision, dated March 10, 2025). The lack of analysis
17 and explanation underpinning the IJ’s denial of bond reflects that she not only ignored all of
18 Petitioner’s compelling evidence but also failed to evaluate any of the factors that should have
19 been taken into consideration when rendering her ruling, including those set forth in *Matter of*
20 *Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

21 The “hearing” that Respondents provided Petitioner absolutely failed to comport with the
22 bare minimum of due process, in flagrant violation of this Court’s Order granting injunctive
23 relief. As Respondents have now disregarded this Court’s mandate to provide Petitioner with a
24 hearing at which the Government bore the burden of establishing, by clear and convincing
25 evidence, that Petitioner poses a danger to the community or a risk of flight, Petitioner
26 respectfully requests that this Court enforce its injunction and order him immediately released
27 from Respondents’ custody.

28 **II. RELEVANT STATEMENT OF FACTS AND PROCEDURAL HISTORY**

1 As the Court is already familiar with the underlying facts of this case, *see* Dkt. 1 (Habeas
2 Petition) and Dkt. 2 (Motion for Temporary Restraining Order), Petitioner provides here a
3 statement of facts relevant to the instant motion to enforce this Court’s preliminary injunction
4 Order.

5 **A. Petitioner Enters the United States in [REDACTED] is Released on Bond after an**
6 **IJ Determines He is Neither a Danger Nor a Flight Risk, and Lives at Liberty**
7 **for Five Years, Complying with All Bond Conditions and Reporting**
8 **Requirements until being Arrested by ICE on [REDACTED]**

9 As the Court is aware, Petitioner fled [REDACTED] and entered the United States to seek asylum
10 on [REDACTED]. On [REDACTED], an IJ released Petitioner on bond in the amount of
11 \$12,500 after determining that he did *not* present a danger or flight risk sufficient to justify his
12 continued prolonged incarceration. For five years, Petitioner lived at liberty while complying
13 with all conditions of his bond.

14 In February 2023, ICE learned that the [REDACTED] government had obtained an INTERPOL
15 Red Notice for Petitioner. Dkt. 8-1 at ¶ 15. At that time, ICE also received as documents
16 showing that the [REDACTED] police had filed politically motivated criminal charges against Petitioner
17 in several pending criminal cases. *Id.* As a result, ICE interviewed Petitioner in May 2023 and
18 thereafter required him to periodically appear in person for check-in appointments at ICE’s
19 Sacramento Field Office. Petitioner complied with ICE’s reporting requirements by appearing at
20 ICE’s Sacramento Field Office on four¹ occasions—May 17, 2023, July 17, 2023, January 27,
21 2024, and December 17, 2024. Dkt. 2 at 13. On each occasion, ICE made the determination to
22 not take Petitioner into custody and to instead permit him to return to his home, family, and
23 employment.

24 On January 20, 2025, Donald J. Trump took office. On January 25, 2025, senior ICE
25 officials were directed to make at least seventy-five arrests per day at their respective field
26

27 ¹ The evidence submitted by DHS prior to Petitioner’s bond hearing reflects that Petitioner
28 appeared on four occasions—rather than three—at the ICE Sacramento Field Office. *See* Second
Sinodis Decl. at Exh. G (DHS Evidence filed on Mar. 7, 2025).

1 offices.²

2 Three days later, on January 28, 2025, Petitioner presented himself before the ICE
3 Sacramento Field Office, in compliance with ICE’s requirement. That day, rather than release
4 Petitioner as it had done on four prior occasions, ICE re-detained him without first providing him
5 a due process hearing as to whether his re-arrest was lawful. Following Petitioner’s arrest, ICE
6 confirmed to undersigned Counsel that nothing had changed between February 2023 when ICE
7 learned about the INTERPOL Red Notice and criminal cases in [REDACTED] and the date of Petitioner’s
8 re-arrest. Dkt. 1 at ¶ 10. In subsequent proceedings before this Court, Respondents took the
9 position that the arrest was justified based Petitioner being subject to mandatory detention under
10 8 U.S.C. § 1225(b)(1)(B)(ii) (as an arriving noncitizen who had passed a credible fear screening)
11 and because of “ICE’s knowledge of criminal charges” in [REDACTED] that it learned about in February
12 2023. *See* Dkt. 8 at 3.

13 **B. This Court Grants Petitioner a Preliminary Injunction on March 3, 2025,**
14 **Ordering that Respondents Provide Him a Hearing by March 10, 2025, at**
15 **which the Government Bears the Burden to Establish by Clear and**
16 **Convincing Evidence that He is a Danger or a Flight Risk**

17 On March 3, 2025, this Court granted Petitioner a preliminary injunction, finding that
18 “Petitioner has established a strong likelihood of success in showing that he has an interest in his
19 continued liberty and that mandatory detention under section 1225(b)(1)(B)(ii) would violate his
20 due process rights unless he is afforded adequate process.” Dkt. 19 at 9. In that Order, the Court
21 found that Petitioner was entitled to a due process hearing *before* his re-arrest occurred. *Id.* at 4.
22 However, given that ICE had unlawfully re-incarcerated Petitioner and subjected him to
23 mandatory detention, the Court obligated Respondents to provide Petitioner with a bond hearing
24 before an IJ where the Government bore the burden of establishing, by clear and convincing
25 evidence, that Petitioner poses a danger to the community or a risk of flight. *Id.* at 14-15. The
26 Court ordered Respondents to provide Petitioner “with such a hearing on or before March 10,

27 ² *See* “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post*
28 (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 2025, if no hearing occurs by this time, Petitioner shall be released from Respondents' custody.”

2 *Id.*

3 Following the Court's order, on March 5, 2025, Respondents scheduled Petitioner for a
4 bond hearing on March 10, 2025, before the Adelanto Immigration Court. Second Sinodis Decl.
5 at Exh. A (Notice of Custody Redetermination Hearing for March 10, 2025).

6 **C. Petitioner submits evidence to the Immigration Court demonstrating the**
7 **INTERPOL Red Notice and underlying allegations are unreliable,**
8 **evidentiarily unsound, and prejudicial.**

9 In advance of the hearing, Petitioner submitted hundreds of pages of evidence in support
10 of his motion for custody redetermination. This evidence included several expert reports, identity
11 documents, evidence of Petitioner's political participation, evidence that Petitioner suffered
12 persecution in [REDACTED], Petitioner's medical records demonstrating that he is suffering irreparable
13 harm in custody, affidavits from family members detailing how they had been physically and
14 psychologically tortured by [REDACTED] police due to their relationship with Petitioner, numerous
15 letters of support from friends and community leaders, and country conditions evidence
16 demonstrating the harm that Petitioner, a [REDACTED], would face if returned to [REDACTED]. Second
17 Sinodis Decl. at Exh. B (Petitioner's Evidence filed on March 7, 2025); *id.* at Exh. C (Country
18 Conditions Evidence filed on March 7, 2025); *id.* at Exh. D (Expert Reports filed on March 7,
19 2025); *id.* at Exh. E (Petitioner's Witness List filed on March 9, 2025); *id.* at Exh. F (Petitioner's
20 Evidence filed on March 10, 2025).

21 As part of the evidence of the persecution he experienced in [REDACTED], Petitioner submitted
22 documents demonstrating how the [REDACTED] police have targeted him for nearly a decade in the
23 form of specious criminal allegations. In 2016, Petitioner faced charges of rioting, but the court
24 ultimately found him not guilty and acquitted him. *See id.* at Exh. B at Tab N (Judgment of
25 Acquittal in First Incident Report (FIR) No. 539). In 2017, he was again accused of rioting along
26 with several hundred [REDACTED] men—this charge was subsequently dismissed on February 28, 2022,
27 after the complainant testified the events never happened and witnesses stated that the police had
28 procured their signatures on blank pieces of paper and used those pieces of paper to fabricate
false witness statements. *See id.* at Exh. F at Tab C (Judgment of Acquittal in FIR No. 516). To

1 provide additional context for these charges, Petitioner submitted an expert report by Dr. Cynthia
2 Mahmood, Ph.D. an expert on country conditions in [REDACTED] who explained that “the use of ‘false
3 cases’ is known throughout [REDACTED] as a common police tactic to detain, harass and persecute
4 political activists who are critical of authorities.” *Id.* at Tab A (Expert Report of Dr. Cynthia
5 Mahmood).

6 Petitioner’s evidence also included affidavits from his mother and brother, who explained
7 how they, along with Petitioner’s sister and her husband, were arrested and tortured by [REDACTED]
8 police due to their connection with Petitioner. *Id.* at Exh. B at Tabs I, J (Declarations of
9 Petitioner’s Mother and Brother). [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 Petitioner’s mother similarly described how, [REDACTED]

26 [REDACTED]
27 [REDACTED]
28 [REDACTED]).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 Additionally, Petitioner submitted an expert report from Dr. Theodore “Ted” R. Bromund
8 regarding INTERPOL Notices and his professional opinion about Petitioner’s Red Notice. *Id.* at
9 Exh. D at Tab A (Expert Report from Dr. Ted Bromund). Dr. Bromund’s declaration noted
10 numerous procedural irregularities with the Red Notice, and explained that the Red Notice, far
11 from serving as evidence of guilt, indicates that Petitioner has been targeted for transnational
12 repression by the [REDACTED] government. *Id.* In fact, [REDACTED]

13 [REDACTED]
14 [REDACTED]

15 [REDACTED] Petitioner also submitted a declaration from one of his attorneys, Sandra
16 Grossman, who is representing him in proceedings before INTERPOL. *Id.* at Exh. C
17 (Declaration from Sandra Grossman). Attorney Grossman explained the numerous irregularities
18 in the INTERPOL notice and the steps her office was taking to have INTERPOL retract the
19 notice because Petitioner is a bona fide asylum seeker. *Id.*

20 Finally, prior to the hearing on March 10, 2025, Petitioner submitted a witness list
21 informing the IJ that he intended to present testimony from both Dr. Cynthia Mahmood, country
22 conditions expert, and Dr. Ted Bromund, expert on the abuse and misuse of Interpol Notices. *Id.*
23 at Exh. E (Witness List).

24 **D. Respondents Submit Recycled Three-Year-Old Evidence That It Received in**
25 **February 2023, Which Is Replete with Procedural Irregularities and**
26 **Evidentiary Issues**

27 In advance of the hearing, on March 7, 2025, ICE submitted evidence of an INTERPOL
28 Red Notice from 2022 and the underlying criminal allegations on which the Red Notice was
based. *Id.* at Exh. G (DHS Evidence). The allegations against Petitioner consist of several police

1 reports from [REDACTED] and press articles regarding incidents that he was allegedly involved in. *Id.*
2 Importantly, ICE received the Red Notice and underlying criminal allegations in February 2023,
3 Dkt. 8-1 at ¶ 15, and ICE filed those documents with the Sacramento Immigration Court in
4 March 2024. ICE did not file any new evidence prior to the March 10, 2025, hearing.

5 As described further below, ICE’s recycled evidence included the charges of which
6 Petitioner had been acquitted after witnesses testified the police forced them to sign blank pieces
7 of paper, charges based on evidence obtained by police torture, as testified to by numerous
8 witnesses, including Petitioner’s mother and brother, and charges that reflect the [REDACTED]
9 government has been stalking and surveilling Petitioner since he fled the country to save his life.
10 *Id.*

11 **E. At the Hearing on March 10, 2025, the IJ Improperly Refuses to Hear**
12 **Testimony and Does Not Allow Petitioner to Present Evidence, Cross-**
13 **Examine Government Witnesses, or Rebut Government Evidence**

14 On March 10, 2025, Petitioner appeared for a bond hearing before an IJ at the Adelanto
15 Immigration Court. At the hearing, the IJ first briefly summarized the evidence submitted by
16 Petitioner and the Red Notice and criminal allegations against Petitioner from India submitted by
17 Respondents. *See* Second Sinodis Decl. at Exh. H (Transcript of Bond Hearing), 5:3-7:8.
18 Petitioner, through counsel, objected to the submission of the Red Notice and the underlying
19 criminal charges from [REDACTED], on the grounds that: (1) Petitioner had a right to cross-examine the
20 police and the witnesses who made these purported statements; (2) the documents had not been
21 authenticated; and (3) the documents were unreliable as set out by Petitioner’s experts. *Id.* at
22 7:17-8:3. Petitioner also identified some of the clear inconsistencies in the police reports that
23 significantly undermined their reliability. [REDACTED]

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 The IJ did not respond to these evidentiary issues raised by Petitioner. Instead, without

1 providing any basis for the determination, the IJ stated “the Court is not going to take testimony.
2 The Court is going to find in this matter that the government has met its burden that respondent’s
3 a danger, as well as a flight risk.” *Id.* at 11:18-11:21.⁴ Despite repeated requests by Petitioner to
4 present testimony, the IJ did not permit Petitioner, his experts, or any other witnesses to testify.
5 Petitioner, through counsel, repeatedly requested the full-blown evidentiary hearing to which he
6 was entitled. *See id.* at 12:8-14. The IJ, however, did not budge, simply stating, “Again, I made
7 my decision.” *Id.* at 14:20.

8 At no point during the hearing did the IJ provide an explanation for her finding that
9 Petitioner was a danger or a flight risk. *See generally id.* Following the hearing, the IJ issued an
10 order on Petitioner’s motion for bond that stated, in its entirety, “Denied, because
11 Danger/Flight.” *Id.* at Exh. I (IJ Decision, dated March 10, 2025).

12 On April 3, 2025, Petitioner appealed the IJ’s decision to the Board of Immigration
13 Appeals (BIA). *See* Second Sinodis Decl. at Exh. J (Appeal of IJ’s Bond Order). Nevertheless,
14 Petitioner is not required to exhaust any administrative remedies in this instance, and the Court
15 need not wait for the BIA to decide the appeal. *See Hernandez v. Sessions*, 872 F.3d 976, 988–89
16 (9th Cir. 2017). The BIA cannot rule on the constitutionality of the statutes it administers. *Am.-*
17 *Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding
18 exhaustion to be a “futile exercise because the agency does not have jurisdiction to review”
19 constitutional claims). Further, the BIA has no expertise regarding how to ensure compliance
20 with this Court’s Order. *See Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1029 (N.D. Cal. 2018),
21 *vacated and remanded on other grounds sub nom. Ramos v. Garland*, No. 18-15884, 2024 WL
22 933654 (9th Cir. Mar. 1, 2024) (petitioner “need not seek administrative review before filing a
23 motion to enforce” the court’s prior order). Moreover, BIA appeals take extended periods of time
24 to be resolved. *Martinez v. Sessions*, 873 F.3d 655, 660 (9th Cir. 2017). Like other courts within
25 the Ninth Circuit, this Court should therefore exercise its inherent jurisdiction to enforce its
26 Order granting Petitioner a preliminary injunction. *Sales v. Johnson*, 2017 WL 6855827, at *7

27 ⁴ Notably, until the Court made its purported finding that Petitioner was a flight risk, ICE had
28 never taken that position in immigration court proceedings or proceedings before this Court that
Petitioner posed a flight risk. *See* Dkt. 8; Second Sinodis Decl. at Exh. H (Transcript).

1 (N.D. Cal. Sept. 20, 2017) (“Respondents have cited no authority for the proposition that a
2 litigant must exhaust administrative remedies before filing a motion to enforce a final judgment.
3 Furthermore, Petitioner contends that there is no administrative agency process through which
4 Mr. Sales can seek compliance with a federal court order.”); *see also Mau v. Chertoff*, 562 F.
5 Supp. 2d 1107, 1113–14 (S.D. Cal. 2008) (“As an initial matter, the Court disagrees with
6 Respondents’ argument that Petitioner should be required to pursue an appeal with the BIA
7 before returning to this Court and requesting enforcement of its judgment. This request for relief
8 relates directly to this Court’s prior order and, as such, there are no administrative remedies to
9 exhaust. It should not fall to the BIA to review Respondents’ compliance with this Court’s
10 judgment.”); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1125 (S.D. Cal. 2008). This Court
11 already recognized the urgency required to remedy the grave constitutional violations at stake in
12 this case in granting Petitioner a preliminary injunction.

13 **III. LEGAL STANDARD**

14 A court has “inherent power to enforce its judgments[.]” *California Dep’t of Soc. Servs. v.*
15 *Leavitt*, 523 F.3d 1025, 1033 (9th Cir. 2008). “[H]abeas courts are empowered to make an
16 assessment concerning compliance with their mandates.” *Judulang*, 562 F. Supp. 2d at 1126–
17 1127. This includes continuing jurisdiction to enforce an injunction. *United States v. Bryan*, No.
18 CIV. 2:04-2363 WBS, 2010 WL 4312866, at *1 (E.D. Cal. Oct. 25, 2010) (quoting *Hangarter v.*
19 *Paul Revere Life Ins. Co.*, 289 F.Supp.2d 1105, 1107 (N.D.Cal.2003)).

20 District courts in the Ninth Circuit and across the country regularly grant detained
21 noncitizen habeas petitioners release under adequate conditions of supervision when the
22 government fails to provide them with a hearing consistent with prior orders of the court. *See,*
23 *e.g., Mau*, 562 F. Supp. 2d 1107, 1119 (S.D. Cal. 2008) (ordering petitioner’s release when “the
24 evidence before the IJ failed, as a matter of law, to prove flight risk or danger pursuant to the
25 Court’s order”); *Sales*, No. 16-CV-01745-EDL, 2017 WL 6855827, at *7 (ordering petitioner’s
26 release under appropriate conditions of supervision when IJ failed to correctly apply clear and
27 convincing standard in violation of court order); *Ramos*, 293 F. Supp. 3d 1021 at 1036 (granting
28 motion to enforce and ordering release under appropriate conditions of supervision when

1 government failed to meet clear and convincing burden); *Mathon v. Searls*, 623 F. Supp. 3d 203,
2 218 (W.D.N.Y. 2022) (ordering petitioner released on conditions determined by the court when
3 IJ failed to comply with the conditions contained in the Court's order and did not provide
4 petitioner with a constitutionally adequate bond hearing). *See also Swann v. Charlotte-*
5 *Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) (“Once a right and a violation have been shown,
6 the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and
7 flexibility are inherent in equitable remedies.”).

8 In *Ramos*, the court, in deciding a motion to enforce the Court’s prior order mandating a
9 due process hearing under a clear and convincing standard, adopted the standard of review an
10 appellate court applies when reviewing a lower court’s application of the clear and convincing
11 evidence standard. 293 F. Supp. at 1030-1031 (citing *United States v. Salerno*, 481 U.S. 739, 751
12 (1987)). The *Ramos* court noted that the Ninth Circuit has recognized in an immigration bond
13 case that the same clear and convincing evidence standard applies in criminal bail cases, where
14 the court assesses whether to release a person charged with, but not yet convicted of, a crime
15 because they pose such a significant danger to society. *Id.* at 1031 (quoting *Tijani v. Willis*, 430
16 F.3d 1241, 1246 (9th Cir. 2005) (Tashima, J., concurring) (internal citations omitted). Analyzing
17 the standards applied to review of the clear and convincing standard in bail determination cases,
18 the Court concluded that a similar standard of review should apply in the immigration bond
19 context. The *Ramos* court therefore determined the district court in this context “reviews the IJ’s
20 factual findings for clear error, and independently reviews the facts, findings, and record to
21 determine, de novo, whether those facts clearly and convincingly demonstrate that [Petitioner]
22 poses such a danger to the community that she must remain detained, including because no
23 alternative to detention could protect the community.” *Id.* at 1032-1033 (citing *United States v.*
24 *Townsend*, 897 F.2d 989, 994 (9th Cir. 1990)). Because the *Ramos* court determined that the
25 evidence presented to the IJ did not clearly and convincingly demonstrate danger or flight risk,
26 the court found Respondents had failed to comply with its Order, granted the motion to enforce,
27 and ordered the petitioner released under appropriate supervision conditions. This Court should
28 find the same here.

1 **IV. ARGUMENT**

2 **A. Respondents Violated this Court’s Injunction When the IJ Erroneously**
3 **Denied Bond Despite ICE’s Failure to Prove Danger and Flight Risk by**
4 **Clear and Convincing Evidence, and this Court Should Order Petitioner**
5 **Released**

6 In its Order granting a preliminary injunction on March 3, 2025, this Court found that
7 “Petitioner has established a strong likelihood of success in showing that he has an interest in his
8 continued liberty,” and that continued detention “would violate his due process rights unless he
9 is afforded adequate process.” Dkt. 19 at 9. The Court held that Petitioner was entitled to a
10 hearing before an IJ to determine whether his detention is warranted, and that at that hearing, the
11 Government bore the burden of establishing, by clear and convincing evidence, that Petitioner
12 poses a danger to the community or a risk of flight. *Id.* at 14-15. The Court ordered Respondents
13 to provide Petitioner “with such a hearing on or before March 10, 2025,” otherwise “Petitioner
14 shall be released from Respondents’ custody.” *Id.*

15 At the hearing on March 10, 2025, the IJ erroneously denied bond despite ICE’s utter
16 failure to prove current dangerousness or flight by clear and convincing evidence. In addition to
17 the fact that ICE filed recycled documents that are three years old—which are inherently
18 unreliable and also could not remotely address whether Petitioner’s is a *current* danger or flight
19 risk—the IJ refused Petitioner’s request to present witness testimony in support of his motion for
20 bond and overruled Petitioner’s objection to the admission of hearsay evidence without the
21 opportunity to conduct any cross-examination. These clear errors were only compounded by the
22 IJ’s failure to: (1) take into consideration the amount of time that Petitioner had remained out of
23 custody, in full compliance with ICE’s reporting requirements, following ICE’s notification of
24 the INTERPOL Red Notice and underlying  criminal charges in February 2023; (2)
25 analyze any of the evidence filed by Petitioner; (3) evaluate any of the factors set forth in *Matter*
26 *of Guerra*; and (4) correctly apply the burden of proof on the government, as due process and
27 this Court required.
28

1 **1. The Clear and Convincing Evidence Standard is a “Heavy Burden”**
2 **That Must Be Demonstrated In Fact, Not in Theory, Because The**
3 **Loss of Freedom from Confinement is Significant**

4 “Case law demonstrates that establishing dangerousness by ‘clear and convincing
5 evidence’ is a high burden and must be demonstrated in fact, not ‘in theory.’” *Obregon v.*
6 *Sessions*, No. 17-CV-01463-WHO, 2017 WL 1407889, at *7 (N.D. Cal. Apr. 20, 2017) (quoting
7 *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991) (affirming the district court’s
8 conclusion that, although the government had demonstrated the defendant was a Mafia Boss and
9 that, “in theory a Mafia Boss was an intimidating and highly dangerous character,” it had failed
10 to show that “this Boss posed a significant danger”). The Ninth Circuit has emphasized that the
11 clear and convincing standard is a “heavy burden,” and is “far in excess of the preponderance
12 sufficient for most civil litigation.” *Eastwood v. Nat’l Enquirer, Inc.*, 123 F.3d 1249, 1252 (9th
13 Cir. 1997) (quoting *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985)).

14 The clear and convincing standard is used “because it is improper to ask the individual to
15 share equally with society the risk of error when the possible injury to the individual—
16 deprivation of liberty—is so significant.” *Singh*, 638 F.3d at 1203-04 (emphasis added) (cleaned
17 up) (citing *Addington v. Texas*, 441 U.S. 418, 427 (1979)). “Rather, when a fundamental right,
18 such as individual liberty, is at stake, the government must bear the lion’s share of the burden.”
19 *Tijani*, 430 F.3d at 1245. Indeed, “[d]eprivation of liberty should be a *rare* circumstance for non-
20 citizens in immigration detention, reserved only for those who are a threat to national security or
21 poor bail risks.” *Obregon*, 2017 WL 1407889 at *9 (emphasis added). In the context of criminal
22 pretrial detention, the Supreme Court has provided that the clear and convincing evidence
23 standard requires the government to prove that the detained person “presents an identified and
24 articulable threat to an individual or the community,” and “no conditions of release can
25 reasonably assure the safety of the community or any person.” *Salerno*, 481 U.S. at 750-51, *cited*
26 *favorably in Obregon*, 2017 WL 1407889.

27 In *Matter of Guerra*, the BIA established several factors the IJ should consider when
28 assessing an individual’s risk of flight and dangerousness, including:

- (1) whether the immigrant has a fixed address in the United States; (2) the
immigrant’s length of residence in the United States; (3) the immigrant’s family

1 ties in the United States, (4) the immigrant’s employment history, (5) the
2 immigrant’s record of appearance in court, (6) the immigrant’s criminal record,
3 including the extensiveness of criminal activity, the recency of such activity, and
4 the seriousness of the offenses, (7) the immigrant’s history of immigration
5 violations; (8) any attempts by the immigrant to flee prosecution or otherwise
6 escape from authorities; and (9) the immigrant’s manner of entry to the United
7 States.

8 24 I & N Dec. at 40.

9 More specifically regarding a dangerousness determination, even where an individual has
10 been convicted of a criminal offense—Petitioner here has not—an individual’s criminal history
11 “alone will not always be sufficient to justify denial of bond on the basis of dangerousness.”
12 *Singh v. Holder*, 638 F.3d at 1206. The “extensiveness of criminal activity, the recency of such
13 activity, and the seriousness of the offenses” are also contemplated. *Matter of Guerra*, 24 I & N
14 Dec. at 40. However, courts must also consider the “remoteness” of the criminal activity as well
15 as “intervening events that might undermine a finding of dangerousness.” *Obregon*, 2017 WL
16 1407889, at *7 (collecting cases). Furthermore, “if the clear and convincing standard means what
17 it says, it cannot permit detention based on mere speculation that [a noncitizen’s] release might
18 possibly pose a danger.” *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227 (W.D.N.Y. Jan. 16,
19 2019) (emphasis added).

20 In reviewing whether an IJ correctly applied a burden of proof, “[i]t seems clear [] that a
21 standard of review which asks only whether the IJ announced the correct legal standard is
22 insufficient.” *Ramos*, 293 F. Supp. 3d at 1030; *see also Obregon*, 2017 WL 1407889 at *7 (IJ
23 announced correct standard, but the district court went on to assess whether she correctly applied
24 that standard). *See also Nat’l Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir.
25 2016) (“An agency acts contrary to the law when it gives mere lip service or verbal
26 commendation of a standard but then fails to abide the standard in its reasoning and decision.”);
27 *Cole v. Holder*, 659 F.3d 762, 771–72 (9th Cir. 2011) (“[W]here there is *any* indication that the
28 BIA did not consider all of the evidence before it, a catchall phrase does not suffice, and the
decision cannot stand. Such indications include misstating the record and failing to mention
highly probative or potentially dispositive evidence.”) (emphasis added).

1 Here, the IJ erred as a matter of law in several respects, including by completely ignoring
2 Petitioner’s evidence, failing to analyze any factors for release, providing absolutely no
3 reasoning or explanation for her ruling, and misapplying the burden of proof. For these reasons,
4 as well as those more fully explained below, this Court must find that Respondents have failed to
5 comply with the preliminary injunction order and grant Petitioner’s immediate release from
6 custody.

7 **2. The IJ’s Admission of Unreliable and Unauthenticated Evidence,**
8 **Refusal to Hear Witness Testimony from Petitioner and Two Experts,**
9 **and Misapplication of the Burden of Proof, Violated Petitioner’s Due**
10 **Process Rights and Deprived Him of a Fundamentally Fair Hearing,**
11 **in Contravention of this Court’s Order**

12 “As a person inside the United States, Petitioner is entitled to the protections of the Due
13 Process Clause.” Dkt. 19 at 6 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). Applying
14 the factors described in *Mathews v. Eldridge*, 424 U.S. 319 (1976), this Court concluded that
15 Petitioner must be immediately released from custody unless the government could prove, by
16 clear and convincing evidence during a hearing that complied with due process, that he is a
17 danger to the community or a risk of flight. *Id.* at 14-15. The Court wrote, “at a hearing, a neutral
18 decisionmaker can consider all of the facts and evidence before him to determine whether
19 Petitioner in fact presents a risk of flight or dangerousness. The reliability and significance of the
20 alleged changes in circumstance that Respondents identify can be weighed and Petitioner’s
21 liberty interests can be protected.” Dkt. 19 at 10. Unfortunately, the hearing Petitioner received
22 on March 10, 2025, bore no resemblance to the one ordered by this Court.

23 **a. The IJ erred by overruling Petitioner’s objection to**
24 **ICE’s unreliable and unauthenticated evidence without**
25 **the opportunity to conduct cross-examination**

26 Petitioner, through counsel, objected to the submission of the Red Notice and the
27 underlying criminal charges from [REDACTED], on the grounds that (1) Petitioner had a right to cross-
28 examine the police and the witnesses who made these purported statements, (2) the documents
had not been authenticated, and (3) the documents were unreliable as set out by Petitioner’s
evidence and experts. Second Sinodis Decl. at Exh. H (Transcript of Bond Hearing), 7:17-8:3.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Undersigned counsel

10 further noted that DHS’s evidence included identical witness statements regarding Petitioner
11 from different witnesses. *Id.* Petitioner also raised that DHS had submitted several charges of
12 which Petitioner had already been acquitted. *Id.*

13 Notwithstanding the above, the IJ did not respond to, or even acknowledge, the numerous
14 evidentiary issues raised by Petitioner. Nor did the IJ rule on Petitioner’s evidentiary objections
15 or provide any basis for discounting them. *See generally id.* at Exh. H (Transcript). Instead, the
16 IJ admitted the three-year-old documents filed by ICE into the record before rendering her one
17 sentence, four-word order. *Id.* at Exh. I (IJ Order, dated March 10, 2025).

18 While the rules of evidence are relaxed in immigration court, any admitted evidence must
19 be “probative” and “fundamentally fair.” *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir.1995). The
20 stale, unauthenticated criminal allegations that the IJ admitted in this matter, over Petitioner’s
21 objections, were neither probative nor fundamentally fair. *Cf. Villegas–Valenzuela v. INS*, 103
22 F.3d 805, 811–13 (9th Cir.1996) (finding that documents were properly admitted when
23 petitioners failed to present evidence to question their authenticity and failed to refute their
24 contents).

25 The admission of DHS’s documents violated Petitioner’s statutory and due process rights
26 to cross-examine the witnesses who allegedly gave statements to [REDACTED]. Congress has
27 specifically provided that a noncitizen in immigration court proceedings must be given a
28 reasonable opportunity to examine adverse evidence, present favorable evidence, and to cross-

1 examine witnesses presented by the Government. 8 U.S.C. § 1229a(b)(4)(B)); *see also* 8 C.F.R.
2 § 1240.10(a)(4) (respondent will have a reasonable opportunity to examine and object to the
3 evidence against him). The Ninth Circuit has repeatedly held that the government deprives a
4 noncitizen of a fundamentally fair hearing when it fails “to make a good faith effort to afford the
5 alien a reasonable opportunity to confront and to cross-examine the witness against him.”
6 *Alcaraz-Enriquez v. Garland*, 19 F.4th 1224, 1231 (9th Cir. 2021) (quoting *Saidane v. INS*, 129
7 F.3d 1063, 1066 (9th Cir. 1997). Moreover, “[w]here testimonial statements are at issue, the *only*
8 indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution
9 actually prescribes: confrontation.” *Crawford v. Washington*, 541 U.S. 36, 68–69 (2004)
10 (emphasis added) (noting that at a minimum, testimonial statements include police
11 interrogations).

12 Here, the IJ failed to require DHS to produce the witnesses against Petitioner so that he
13 could exercise his constitutional right to confrontation, and did not even attempt to engage with
14 the numerous instances of unreliability pointed out by Petitioner’s counsel and his expert
15 witnesses, thereby depriving Petitioner of his due process rights to meaningfully contest the
16 evidence against him and confront the government’s witnesses.

17 **b. The IJ erred by refusing to hear Petitioner’s own**
18 **testimony and the testimony of two expert witnesses**

19 Additionally, the IJ’s unfounded decision to decline to hear testimony from Petitioner and
20 his two expert witnesses—particularly under the circumstances of this case, where there is
21 extensive evidence of the use of torture by the  police and transnational repression by the
22 Indian government—was a per se error of law. The IJ stated:

23 As the parties know, according to the practice manual -- and that is 9.3(e)(vi)
24 [sic]-- it is the judge’s discretion on whether to hear testimony or not. In this
25 matter, both parties have submitted numerous documents the Court has. Although
26 yes, the Court does note that they were filed -- some of them were as recently
27 filed as Sunday, but the Court has had an opportunity to review all the evidence in
28 this matter. The Court is not going to take testimony. The Court is going to find in
this matter that the government has met its burden that respondent’s a danger, as
well as a flight risk. The Court does believe that the dangerousness of respondent
that would -- that his ongoing detention is necessary.

1 *Id.* at 11:8-23. When Petitioner, through counsel, repeatedly requested the full-blown evidentiary
2 hearing to which he was entitled, the IJ simply responded, “[a]gain, I made my decision.” *Id.* at
3 12:8-14; 14:20.

4 The Immigration Court Practice Manual cannot override the demands of due process.
5 When, as here, the government carries the burden of proof by clear and convincing evidence and
6 the petitioner has identified numerous inconsistencies with the government’s evidence, declining
7 to hear any testimony or permit cross-examination of government witnesses constitutes a failure
8 to correctly apply the burden of proof and a violation of due process.

9 An IJ’s active refusal to hear relevant oral testimony may constitute a due process
10 violation, and clearly did so here. *Oshodi v. Holder*, 729 F.3d 883, 889-90 (9th Cir. 2013) (en
11 banc). “In *any contested administrative hearing*, admission of a party’s testimony is particularly
12 essential to a full and fair hearing where credibility is a determinative factor[.]” *Oshodi*, 729
13 F.3d at 889 (emphasis added) (quoting *Mathews*, 424 U.S. at 343–44) (noting that where
14 credibility and veracity are critical to the decision-making process “written submissions are a
15 wholly unsatisfactory basis for decision”); *accord United States v. Davis*, 845 F.2d 412, 414–
16 15 (2d Cir.1988) (holding that defendants are entitled to testify on their own behalf and present
17 evidence to demonstrate that bail revocation is not merited). “Due process principles prohibit an
18 IJ from declining to hear relevant testimony because of a prejudgment about the witness’s
19 ‘credibility or the probative value of [the] testimony.’” *Lopez-Umanzor v. Gonzales*, 405 F.3d
20 1049, 1056 (9th Cir. 2005) (quoting *Kaur v. Ashcroft*, 388 F.3d 734, 737 (9th Cir.2004). Where,
21 as here, Petitioner vigorously disputes the veracity of the government’s evidence, the opportunity
22 to testify and present evidence on his own behalf was an “essential aspect of a full and fair
23 hearing.” *Id.* Due process clearly required the IJ to hear Petitioner’s testimony and the testimony
24 of his two expert witnesses, but she erred when she inexplicably prevented him from eliciting
25 any testimony at all.

26 “[T]he touchstone of due process is fundamental fairness.” *Black v. Atkins*, No. 2:21-CV-
27 02371-DJC, 2023 WL 8233142, at *6 (E.D. Cal. Nov. 28, 2023) (Calabretta, J.) (quoting *Walters*
28 *v. Nat’l Ass’n of Radiation Survivors*, 473 U.S. 305, 321 (1985). “Generally, a procedure is

1 fundamentally fair if a party is given an opportunity to be heard ‘at a meaningful time and in a
2 meaningful manner.’” *Id.* (quoting *Mathews*, 424 U.S. at 333). This Court has observed that a
3 meaningful opportunity to be heard includes “the opportunity to present evidence and testify in
4 the proceedings.” *Id.* At his March 10 hearing before the IJ, Petitioner was deprived of any
5 opportunity to be heard at all, let alone a meaningful one.

6 The IJ’s decision to exclude expert testimony was similarly in error. The Ninth Circuit
7 has found that an IJ’s exclusion of expert testimony and testimony of corroborating witnesses
8 may violate due process. *See Lopez–Umanzor*, 405 F.3d at 1057–58 (holding that the IJ’s refusal
9 to hear petitioner’s experts’ testimony violated due process when it barred the “introduction of
10 significant testimony”); *Kaur*, 388 F.3d at 737–38 (holding that the IJ’s exclusion of petitioner’s
11 son’s testimony, who would have been a corroborating witness, violated due process). Here,
12 Petitioner had notified the IJ that he intended to present the testimony of two witnesses: Dr.
13 Theodore “Ted” Bromund, Ph.D., an expert on INTERPOL, and Dr. Cynthia Mahmood, Ph.D., a
14 country conditions expert on [REDACTED]. Second Sinodis Decl. at Exh. E (Witness List). Dr. Bromund
15 and Dr. Mahmood would have testified to the unreliability of INTERPOL Notices and the Indian
16 government’s practice of issuing false criminal charges against political dissidents. *See id.* at
17 Exh. D (Expert Reports). Petitioner’s mother and brother were also present via video at the
18 hearing on March 10, 2025, and were prepared to testify [REDACTED]

19 [REDACTED]
20 [REDACTED] In excluding Petitioner’s experts and corroborating witness, the IJ clearly “prevented the
21 introduction of significant testimony” and violated Petitioner’s due process rights. *Lopez–*
22 *Umanzor*, 405 F.3d at 1057–58; accord *Davis*, 845 F.2d at 414–15 (holding that defendants are
23 entitled to testify on their own behalf and present evidence to demonstrate that bail revocation is
24 not merited).

25 **c. The IJ ignored all of Petitioner’s evidence, failed to take**
26 **into account any of the *Matter of Guerra* factors, and**
27 **misapplied the clear and convincing evidence standard**

28 Moreover, the IJ ignored all of Petitioner’s evidence, failed to consider any of the factors
set forth in *Matter of Guerra*, and provided absolutely no basis for her decision that Petitioner

1 was a danger or a flight risk, demonstrating that she failed to understand or correctly apply the
2 burden of proof. Second Sinodis Decl. at Exh. J (Transcript of Hearing on Mar. 10, 2025); *see*
3 *also id.* at Exh. I (IJ Order, dated March 10, 2025). At no point during the hearing or in the
4 subsequent decision did the IJ mention any of Petitioner’s evidence or explain *why* he was a
5 danger or a flight risk. Her failure to offer any rationale for her findings was especially egregious
6 given that, until the IJ made her finding that Petitioner was a flight risk, ICE had *never* taken that
7 position. *See, e.g.*, Dkt. 8; Second Sinodis Decl. at Exh. H (Transcript). Nor could it. The record
8 shows that, following ICE’s receipt of the INTERPOL Red Notice and underlying criminal
9 allegations in February 2023, Petitioner physically reported to ICE’s Sacramento Field Office on
10 four occasions and, each time, ICE made the determination to not take him into custody. *See*
11 Second Sinodis Decl. at Exh. G (DHS Evidence); Dkt. 2 at 13. That the IJ could not even muster
12 a facially bona fide reason to justify denying bond, particularly on grounds that ICE had not
13 previously argued, is evidence that she did not review the record but had instead predetermined
14 that she would deny bond.

15 Briefly summarizing the evidence and stating the clear and convincing standard aloud is
16 not sufficient to show that the IJ correctly applied the clear and convincing standard. *See, e.g.*,
17 *Sales*, No. 16-CV-01745-EDL, 2017 WL 6855827, at *6 (“This brief and conclusory treatment
18 of the evidence that Petitioner is a flight risk at the June 23, 2017 hearing does not actually, or
19 correctly, apply the clear and convincing standard”). Following the hearing, the IJ issued an
20 order on Petitioner’s motion for bond that stated, in its entirety, “Denied, because
21 Danger/Flight.” *Id.* at Exh. I (IJ Decision, dated March 10, 2025). These four words do nothing
22 to explain how or why the IJ reached the conclusion that Petitioner is a danger and a flight risk.
23 *Cole*, 659 F.3d at 771–72 (“[W]here there is any indication that the BIA did not consider all of
24 the evidence before it, a catchall phrase does not suffice, and the decision cannot stand. Such
25 indications include misstating the record and failing to mention highly probative or potentially
26 dispositive evidence.”). They instead reflect that the hearing on March 10 failed to comply with
27 due process and only served to further violate Petitioner’s rights, thus subjecting him to
28 continued irreparable harm. At a minimum, the IJ abused her discretion by failing to (1) consider

1 Petitioner’s arguments and evidence as to why he must be released from custody and (2) provide
2 *any* explanation—let alone a reasoned explanation—for her decision denying Petitioner bond.
3 *Szonyi v. Barr*, 942 F.3d 874, 896 (9th Cir. 2019) (the agency abuses its discretion where it fails
4 to consider probative evidence) (*citing Zheng v. Holder*, 644 F.3d 829, 833 (9th Cir. 2011));
5 *Hernandez-Galand v. Garland*, 996 F.3d 1030, 1034 (9th Cir. 2021) (the agency “abuses its
6 discretion when it acts arbitrarily, irrationally, or contrary to the law, and when it fails to provide
7 a reasoned explanation for its actions.”).

8 Given these deficiencies, the hearing on March 10, 2025, failed to comply with the
9 Court’s Order and violated Petitioner’s procedural due process rights. Respondents cannot
10 seriously contend that Petitioner was provided a meaningful opportunity to be heard. *See Black*,
11 No. 2:21-CV-02371-DJC, 2023 WL 8233142, at *6 (touchstone of due process includes
12 meaningful opportunity to be heard). This Court could not have intended that “adequate
13 process,” Dkt. 19 at 9, consist of a hearing at which the Petitioner was prevented from cross-
14 examining government witnesses and precluded from presenting any evidence or testimony on
15 his own behalf, particularly where, as here, the record is replete with evidence of torture,
16 procedural irregularities, and contradictory information. The Court’s Order and due process
17 required more from Respondents than bringing Petitioner to a courtroom to have an IJ stamp a
18 paper saying “Danger/Flight” and return him to his cell. *See also Ghaly v. INS*, 58 F.3d 1425,
19 1430 (9th Cir. 1995) (agencies cannot “rely on ‘boilerplate’ opinions ‘which set out general legal
20 standards yet are devoid of any statement that evidence an individualized review of the
21 petitioner’s circumstances.”).

22 **3. Even Assuming, Arguendo, That the IJ Did Not Commit the**
23 **Aforementioned Egregious Legal Errors, ICE’s Documents Fail to**
24 **Show that Petitioner is a Flight Risk or a Danger by Clear and**
25 **Convincing Evidence.**

26 Even if the hearing procedure had not violated Petitioner’s due process rights and this
27 Court’s Order, the evidence submitted by DHS was insufficient to meet the clear and convincing
28 standard mandated by this Court.

a. INTERPOL Red Notices are Unreliable and Cannot
Serve as a Basis to Detain or to Deny Bond; Petitioner’s

**Red Notice in Particular Is Unreliable, As Explained by
Expert Bromund**

1
2 As this Court is aware and as all three branches of government have recognized,
3 INTERPOL Red Notices cannot serve as a basis to detain an individual or deny bond in the
4 United States. In 2021, in recognition of the misuse and abuse of INTERPOL Red Notices by
5 member countries seeking to persecute political dissidents living in exile in the United States,
6 Congress enacted the TRAP Act. The Act provides in part: “It is the sense of Congress that some
7 INTERPOL member countries have repeatedly misused INTERPOL’s databases and processes,
8 including Notice and Diffusion mechanisms, to conduct activities of an overtly political or other
9 unlawful character and in violation of international human rights standards, including by making
10 requests to harass or persecute political opponents, human rights defenders, or journalists.” 22
11 U.S.C. § 263b(a); Dkt. 19 at 8 (quoting § 263b(a)).

12 The TRAP Act further provides for a biannual report to assess the misuse of the
13 INTERPOL system by countries seeking to engage in transnational repression of political
14 dissidents. *Id.* § 263b(c)(2)(E). In the August 2022 report, the Department of Justice and the
15 Department of State jointly recognized:

16 Governments seeking to misuse INTERPOL systems tend not to cite political
17 offenses in their red notices or diffusions, but instead cite what appear on their
18 face to be ordinary law crimes, such as fraud, financial crimes, terrorism, and
19 other offenses that would not facially conflict with INTERPOL’s constitution
and/or rules but are in fact fabricated charges or cases based on weak information
or loose associations.

20 *See* Second Sinodis Decl. at Exh. D at Tab B (USDOS, “Assessment of INTERPOL Member
21 Country Abuse.”).

22 The Ninth Circuit and other circuit courts have recognized that “a Red Notice is not
23 independently vetted for factual and legal justification” and cannot serve as probable cause for an
24 arrest. *Gonzalez-Castillo v. Garland*, 47 F.4th 971, 978 (9th Cir. 2022); *see also Barahona v.*
25 *Garland*, 993 F.3d 1024, 1028 (8th Cir. 2021) (“[t]he parties did not cite, and we could not find,
26 a case in which a court has found a Red Notice, alone, is sufficient to meet this [probable cause]
27 standard.”). Because Red Notices cannot form the basis of a decision by a federal law
28 enforcement agency to arrest or detain someone in the United States, ICE issued guidance in

1 2023 clarifying that its officers will not rely exclusively on a Red Notice to justify detention.

2 Specifically, ICE Directive 15006.1 explained that:

3 [A] Red Notice or Wanted Person Diffusion is not an international arrest warrant
4 and conveys no legal authority to arrest, detain, or remove a person. Therefore,
5 ICE personnel will not rely exclusively on Red Notices or Wanted Person
Diffusions to justify enforcement actions or during immigration proceedings.

6 ICE Directive 15006.1 (Aug. 15, 2023).

7 Most germane to Petitioner's case, in recent years, [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 Petitioner presented extensive evidence to the IJ demonstrating that his Red Notice is
23 riddled with procedural and evidentiary flaws that eviscerated its credibility and revealed its
24 political nature.

25 First, Dr. Bromund noted that the numerous procedural irregularities in the Red Notice
26 against Petitioner "create doubt about whether the Red Notice naming Petitioner reflects an
27 honest and careful investigation of the facts that was unbiased by political considerations." *See*
28 *id.* at Exh. D at Tab A (Expert Report of Dr. Ted Bromund, Ph.D.). Sandra Grossman also

1 outlined the multiple technical and procedural deficiencies that she believes will result in the
2 deletion of the Red Notice. *Id.* at Tab C (Declaration of Sandra Grossman). Specifically,
3 Attorney Grossman detailed how the evidence of gathering witness statements by torture,
4 credible arguments that the allegations are pretextual and retaliatory for Petitioner’s political
5 activism, and Petitioner’s status as an asylum seeker will likely lead to deletion of the Notice. *Id.*

6 Second, Dr. Bromund explained that the Red Notice, far from serving as evidence of
7 guilt, indicates that Petitioner has been targeted for transnational repression by [REDACTED]
8 [REDACTED], which is precisely what Petitioner has claimed since coming to the United States to
9 apply for asylum in [REDACTED]. *Id.* at Tab A (Expert Report of Dr. Ted Bromund, Ph.D.). [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] these irregularities led Dr. Bromund to conclude that the Red
17 Notice “draws on information obtained by methods of transnational repression in the United
18 States and was motivated by a pre-existing desire to target him for his political activities in [REDACTED]
19 and the United States.” *Id.* When coupled with the declaration from Petitioner’s brother, [REDACTED]
20 [REDACTED]
21 [REDACTED] it appears quite evident that the [REDACTED] government was,
22 in fact, stalking him in the United States. *See id.* at Exh. B, at Tab J (Declaration of Petitioner’s
23 Brother).

24 Third, several of the allegations against Petitioner in the Red Notice are demonstrably
25 false. [REDACTED]

26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 For all of these reasons, the INTERPOL Red Notice issued against Petitioner is unreliable
17 and cannot serve as the basis to deny him bond.

18 **b. The Underlying Criminal Charges Presented By the**
19 **[REDACTED] Government Are Similarly Unreliable and Do**
20 **Not Meet the Clear and Convincing Standard**

21 At the hearing on March 10, 2025, ICE conceded that the Red Notice alone was
22 unreliable but asserted that it was corroborated by the underlying criminal allegations that India
23 has presented against Petitioner. *See id.* at Exh. H (Transcript) at 16:1-8. That is incorrect. As
24 Petitioner extensively documented in submissions to the IJ, which would have been corroborated
25 by him and his experts if the IJ had not refused to hear any witness testimony, the underlying
26 allegations are wholly unreliable and do not establish the necessity of his detention. Instead, they
27 establish a continuation of Petitioner’s persecution and torture by the Indian government.

28 First, Petitioner submitted evidence that the existence of the politically motivated charges
against him is part of an ongoing pattern and practice by the [REDACTED] government to submit false

1 charges to silence his activism and political opinion. [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Country conditions confirm that the false criminal charges presented against Petitioner
15 align with the [REDACTED] government's endemic corrupt practice of weaponizing the criminal legal
16 system to silence religious minorities and political dissidents both within their borders and abroad.
17 Country conditions expert Dr. Mahmood explained that "[REDACTED] police are known to be among
18 the most corrupt in the world," and that the use of false cases is rampant. *See id.* at Exh. F, at Tab
19 A (Expert Report of Dr. Mahmood). The U.S. Department of State has noted that "arbitrary arrest
20 or detention," "political prisoners or detainees," and "transnational repression against individuals
21 in another country" are all significant human rights issues in [REDACTED]. *See id.* at Exh. C, at Tab A.1
22 (2023 Report on Human Rights Practices: [REDACTED]). The U.S. Commission on International Religious
23 Freedom designated India a Country of Particular Concern in 2024, noting "[REDACTED] authorities also
24 increasingly engaged in acts of transnational repression targeting religious minorities abroad." *Id.*
25 at Tab A.4 (2024 [REDACTED]).

26 Second, the fact that critical evidence in Petitioner's case was fabricated and obtained as a
27 result of police torture renders it wholly unreliable and taints the entire case against him. [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 [REDACTED] If Petitioner were the
6 brazen criminal mastermind the [REDACTED] police claim him to be, it stands to reason that they would
7 not need to torture witnesses and falsify statements to prove it.

8 In the face of the unimpeached affidavits from Petitioner’s mother and brother, the IJ
9 permitted DHS to erroneously argue that the allegations against Petitioner were supported by
10 “admissions from the respondent’s mother and sister identifying the respondent” and never
11 explained why the statements from Petitioner’s mother and brother should not be taken as true. *Id.*
12 at Exh. H (Transcript) at 9:10. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED]. Had the IJ
19 considered this evidence, she would not have denied release on bond.

20 Third, putting aside Petitioner’s evidence and examining DHS’s evidence on its own, the
21 allegations against Petitioner cannot hold water. Even a perfunctory review of the allegations from
22 the [REDACTED] government reveals glaring irregularities. [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

16 In sum, the evidence submitted by DHS consisted solely of allegations against Petitioner
17 that are merely unsubstantiated accusations with no factual basis. He has never had an opportunity
18 to cross-examine any of the individuals who asserted these allegations against him, he has not been
19 tried for these allegations in a court in [REDACTED], and DHS has not authenticated any of the [REDACTED]
20 documents or presented testimony from any [REDACTED] law enforcement official. The evidence against
21 him merely involves alleged statements ostensibly given to a police department in [REDACTED] by
22 individuals in police custody and news articles based on those statements. Much of the evidence
23 submitted by the police has already been undermined, and there is no independent evidence that
24 Petitioner was involved in any of the conduct described in the allegations.

25 Accordingly, the IJ's assertion that the government met its burden to continue depriving
26 Petitioner of his fundamental right to freedom is irrelevant where she (1) ignored highly
27 probative evidence in the record, (2) failed to provide any reasoning for her decision, (3)
28 prevented Petitioner from cross-examining the government's witnesses, (4) declined to hear any

1 testimony, and (5) apparently utilized wholly unreliable, unauthenticated police reports as the
2 basis for her decision. In short, the allegations against Petitioner could not possibly support a
3 finding by clear and convincing evidence that he poses a danger to the community or a flight
4 risk, especially when he was deprived of any meaningful opportunity to refute the evidence
5 against him.

6 **4. Had the IJ Properly Analyzed the Record, Petitioner Would Have**
7 **Been Granted Release on Bond or Alternatives to Detention or a**
8 **Combination of Both**

9 A full and fair analysis of the record would have led the IJ to conclude that Petitioner is
10 neither a flight risk nor a danger. *See also Matter of Guerra*, 24 I&N Dec. at 40 (providing non-
11 exclusive list of factors to be considered when evaluating whether to grant release on bond).

12 Petitioner is clearly not a flight risk. For two years prior to his unlawful arrest on [REDACTED]
13 [REDACTED] he complied with all of ICE's reporting requirements, appearing in person at ICE's
14 Sacramento Field Office on four occasions—May 17, 2023, July 17, 2023, January 27, 2024, and
15 December 7, 2024. Petitioner also attended all court appearances (with the exception of one time
16 in March 2024 when he was hospitalized) and diligently pursued his applications for relief before
17 the immigration court.

18 Petitioner is likewise not a danger. He has resided in the United States for five years after
19 entering for the purpose of seeking asylum and has significant family and community ties,
20 including his mother and brother who are similarly seeking asylum here. He has been gainfully
21 employed as a truck driver, has attended all required court appearances, has no record
22 whatsoever of immigration violations, and has *never* been convicted of a crime. Petitioner has
23 diligently worked to address the allegations against him by hiring legal counsel to represent him
24 [REDACTED] and before INTERPOL. He is committed to clearing his name of the meritless and
25 politically motivated criminal charges that have been concocted by a police force and
26 government that is known for its corruption and its international assassination plots and murders.
27 *See Sinodis Decl.* at Exh. D at Tab A (Expert Report from Dr. Ted Bromund); *Id.* at Exh. F at
28 Tab A (Expert Report of Dr. Cynthia Mahmood).

1 In short, Petitioner’s arrest on January 28 was not driven by any legitimate concern that
2 he could abscond or harm community members. Had ICE truly believed Petitioner needed to be
3 held in an immigration jail, it would have taken him into custody in February 2023 when it
4 learned of the Red Notice and pending criminal cases [REDACTED] That did not happen because ICE
5 knew that taking Petitioner back into custody was unnecessary. The reality is that ICE
6 unlawfully re-arrested Petitioner, not because his detention is necessary, but to instead comply
7 with its daily arrest quota, which was instituted shortly after the new administration took power.⁵
8 He must therefore be released from custody.

9 Furthermore, there are many far less restrictive alternatives to detention that would be
10 sufficient to protect the community from whatever perceived danger the government believes
11 Petitioner poses, including an ankle monitors and mandatory check ins, to name a few. *See*
12 *Obregon*, 2017 WL 1407889, at *7 (critiquing the “little attention” given to whether “the least
13 restrictive alternative was not further incarceration”); *Sales*, 2017 WL 6855827, at *7 (ordering
14 immigrant released on conditions “such as an ankle monitor and reporting requirements”). Given
15 that Petitioner has never been convicted of a crime and has demonstrated a willingness to comply
16 with all reporting requirements, these safeguards would be more than sufficient to mitigate any
17 perceived risk.

18 **B. The Court Should Order Petitioner’s Immediate Release From Custody**
19 **Because Respondents Failed to Comply with the Preliminary Injunction**
20 **Order**

21 In sum, Respondents violated this Court’s Order in multiple ways. They denied Petitioner
22 bond despite ICE’s utter failure to establish by clear and convincing evidence that he is a current
23 danger or flight. They failed to mention, let alone consider, any of the evidence that Petitioner
24 submitted in support of his release. And, finally, the IJ failed to issue a reasoned decision, likely
25 because the IJ could not provide any adequate reason for denying Petition bond on the record
26 before her.

27 As a result, Petitioner continues to be held in violation of the Constitution, and he should

28 ⁵ *See* “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post*
(January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 be released. Where an IJ has failed to hold a hearing that comported with due process following a
2 district court order, courts have ordered release. In *Mau*, the court initially ordered the
3 government to provide the petitioner with a bond hearing. After the IJ committed “an error of
4 law” by improperly “rel[ying] on two misdemeanor DUI convictions and one felony DUI
5 conviction to deny bond,” the court ordered the petitioner released. *Mau*, 562 F. Supp. 2d at
6 1118–19. With nearly identical procedural history, the court in *Judulang* ordered the petitioner
7 released after finding that “the government did not meet [the] burden imposed” by the court’s
8 prior order requiring a hearing. *Judulang*, 562 F. Supp. 2d at 1126–1127; *see also Swann v.*
9 *Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) (“Once a right and a violation have
10 been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for
11 breadth and flexibility are inherent in equitable remedies.”).

12 In fact, district courts in the Ninth Circuit and across the country regularly grant detained
13 noncitizen habeas petitioners release under adequate conditions of supervision when the
14 government fails to provide them with a hearing consistent with orders of the court. *See, e.g.,*
15 *Sales*, No. 16-CV-01745-EDL, 2017 WL 6855827, at *7 (ordering petitioner’s release under
16 appropriate conditions of supervision when IJ failed to correctly apply clear and convincing
17 standard in violation of court order); *Ramos*, 293 F. Supp. 3d at 1036 (granting motion to
18 enforce and ordering release under appropriate conditions of supervision when government
19 failed to meet clear and convincing burden); *Mathon*, 623 F. Supp. at 218.

20 Respondents have had numerous opportunities to afford Petitioner the due process he is
21 entitled to and have failed to do so at every turn. For that reason, Petitioner seeks this Court’s
22 intervention again. This Court should not permit Respondents to continue violating both
23 Petitioner’s due process rights and the orders of this Court. The Court should instead put an end
24 to the unlawful incarceration of Petitioner by ordering his immediate release.

25 v. **CONCLUSION**

26 For all the above reasons, the Court should order Petitioner’s immediate release from
27 custody. Without such an order, Petitioner will continue to suffer an unlawful deprivation of his
28 liberty with no end in sight and with no constitutionally valid justification.

1 Dated: April 3, 2025

Respectfully submitted,

2 s/Johnny Sinodis

3 Johnny Sinodis

4 Oona Cahill

5 Attorneys for Petitioner

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