

1 MICHELE BECKWITH  
Acting United States Attorney  
2 MICHELLE RODRIGUEZ  
Assistant United States Attorney  
3 501 I Street, Suite 10-100  
Sacramento, CA 95814  
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8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10 JOHN DOE,  
11  
Petitioner,  
12 v.  
13 MOISES BECERRA, ET AL.,<sup>1</sup>  
14 Respondents.

CASE NO. 2:25-CV-00647-DJC-DMC  
MOTION TO DISMISS UNDERLYING  
PETITION AND OPPOSITION TO  
MOTION TO ENFORCE

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17 Hereby, Respondent submits this opposition to Petitioner’s motion to enforce, and otherwise  
18 moves to dismiss the underlying petition. By his motion, Petitioner — while falsely claiming his motion  
19 is to “enforce” a preliminary injunction order for a bond hearing — unlawfully demands an outcome of  
20 bond release regardless of danger and flight risks. ECF 23 at 2, 10, 39. *See Adejola v. Barr*, 439 F.  
21 Supp. 3d 120, 130 (WDNY 2020) (holding that “[t]o the extent [a noncitizen] ... argu[es] that the IJ’s  
22 assessment of that evidence was wrong or that [the IJ] erred in ... credibility determinations or the  
23 weight [the IJ] gave to particular aspects of the record, such arguments are beyond the scope of this

24  
25 <sup>1</sup> Respondent again moves to dismiss and to strike all unlawfully named officials under § 2241.  
26 A petitioner seeking habeas corpus relief is limited to name only the officer having custody of him as the  
27 respondent to the petition. *Riego v. Current or Acting Field Office Director*, Slip Op., 2024 WL  
28 4384220, (E.D. Cal. Oct. 3, 2024) (ordering § 2241 petitioner, a non-citizen alien, to file a motion to  
amend his petition to “name a proper respondent” and setting forth that “[f]ailure to amend the petition  
and state a proper respondent will result in dismissal of the petition for lack of jurisdiction”). *See also*  
28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F3rd  
891, 894 (9th Cir. 1996). *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

1 [court-of-custody's] jurisdiction"). This EDCA court-of-custody may not merely substitute its judgment  
2 for that of the presiding Immigration Judge. *See id.* Despite Petitioner's disagreement with the  
3 Immigration Judge's decision, Respondent complied with this district court-of-custody's preliminary  
4 injunction order and Petitioner's motion to enforce should be denied. *See Vides v. Searls*, 2021 WL  
5 6846277, at \*2 (W.D.N.Y. May 13, 2021) (upholding finding of dangerousness based on IJ's  
6 consideration of evidence tendered by the parties); *Singh v. DHS*, 526 F.3d 72, 80 (2d Cir. 2008) (same).  
7 Further, the underlying Petition is moot and must be dismissed. *See infra.*

8 **I. BACKGROUND**

9 On 1/28/2025, Petitioner, a non-citizen alien, was taken into DHS custody.<sup>2</sup> Petitioner, who was  
10 at that time an alien in expedited removal proceedings for consideration of an application for asylum,  
11 was subject to mandatory detention. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). *See* 8 U.S.C.  
12 § 1225(b)(1)(B)(ii); INA § 235(b)(1)(B)(ii). On 3/3/2025, pursuant to Petitioner's motion under 28  
13 U.S.C. § 2241 and associated temporary restraining order demand, ECF 1, 2, this district court-of-  
14 custody issued a preliminary injunction compelling that Petitioner receive, on or before 3/10/2025, a  
15 bond hearing before an Immigration Judge. *See* ECF 19. This district court-of-custody further ordered  
16 that Respondent was to bear the burden of establishing, by clear and convincing evidence, that Petitioner  
17 poses a danger to the community or a risk of flight. *Id.* at 14-15.

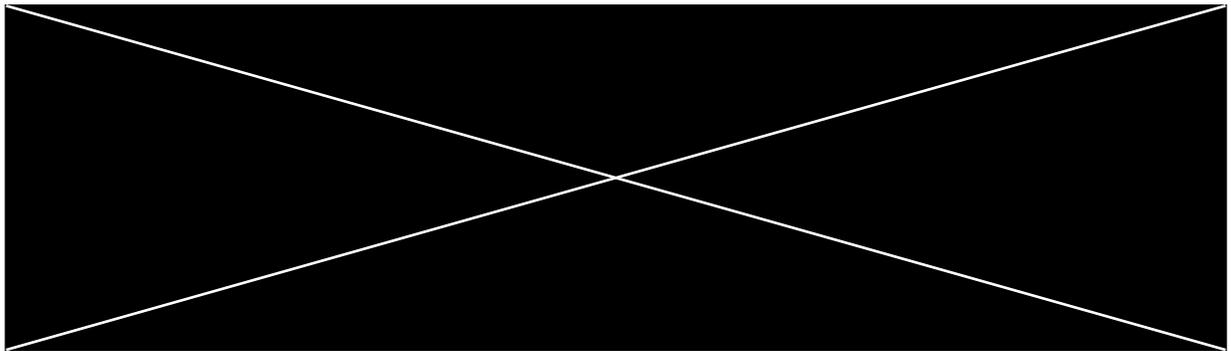
18 In accordance with this district court-of-custody's 3/3/2025 order, an Immigration Judge on  
19 3/10/2025 conducted a bond hearing. Appendix pp 4-22. At the outset of the bond hearing, the  
20 presiding Immigration Judge noted the significant burden on DHS during the bond hearing.  
21 Specifically, the Immigration Judge stated that the scheduled bond hearing was compelled by the district  
22 court-of-custody and that, as the presiding jurist, she understood all burdens of proof were upon DHS.  
23 Additionally, the Immigration Judge stated that the district court-of-custody was requiring DHS "to  
24 justify [petitioner's] continued detention [] by clear and convincing evidence." *Id.* Thereafter, the  
25 Immigration Judge admitted evidence from both Petitioner John Doe and Respondent DHS, including  
26

27 <sup>2</sup> Petitioner had previously, in 2019, unlawfully entered the United States without inspection,  
28 admission, or parole. From 2019 through 1/28/2025, Petitioner was on bond pending removal  
proceedings. *See* ECF 19.

1 this district court-of-custody’s order — itself compelling with particularity — the burden of proof, *i.e.*,  
2 the necessity of DHS presenting clear and convincing evidence as to danger and flight risks. *Id.* Next,  
3 the Immigration Judge unequivocally determined that she had all evidentiary documents from the  
4 parties, with confirmation from Petitioner John Doe. *Id.* (The Immigration Judge asked Petitioner John  
5 Doe’s counsel: “Those are all the documents the Court has in the file. Mr. Sinodis, have you filed any  
6 documents that the Court has not mentioned?” and Sinodis answered: “No, Your Honor.”). The  
7 Immigration Judge thus established all submitted evidence had been reviewed and considered. *Id.*

8 In argument at the bond hearing, as argument doubly waxed in ECF 23, Petitioner John Doe’s  
9 forceful complaint — that the Red Notice evidence was unreliable and discredited — was submitted and  
10 considered. *Id.* at 6. The Immigration Judge thus without doubt had jurisdiction to assess and diminish  
11 weight of all or any submitted evidence. Respondent DHS then pointed out that the Red Notice  
12 evidence in fact was corroborated by multiple investigative reports and police reports, including reports  
13 that Petitioner was a violent gang member in his country of origin.

14 [DHS, department counsel]: The department would just emphasize that as the Court has  
15 already indicated, there's hundreds of pages in this record to show both danger and flight risk,  
16 given the [Petitioner’s] criminal misconduct in India which the department would, you know,  
point out and -- and emphasize that [Petitioner’s] counsel is focused on arguing unreliability of  
Red Notices.



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23 Appendix pp 4-22. DHS counsel also provided the Immigration Judge with legal argument and Ninth  
24 Circuit caselaw establishing that Red Notice evidence becomes more credible and probative when  
25 accompanied, as in this case, with voluminous police reports and investigative reports serving to  
26 establish reliability and independent corroboration of the basis for the Red Notice charges. *Id.* See  
27 *Villalobos Sura v. Garland*, 8 F.4th 1161, 1167–69 (9th Cir. 2021) (holding that a Red Notice along with  
28 corroborating evidence and testimony establishes serious reasons for believing that the alien has

1 committed a crime outside the United States prior to the arrival of the non-citizen alien in the United  
2 States). *See also* 8 U.S.C. § 1158(b)(2)(A)(iii) § 1231(b)(3)(B)(iii) (Red Notice charges accompanied  
3 by corroboration are also permissible for asylum and withholding of removal determinations).

4 Additionally, DHS counsel established that Petitioner John Doe has engaged in criminal activity  
5 here in the United States. Appendix pp 4-22.

6 [DHS, department counsel]: We [the Department of Homeland Security] do not just have  
7 a Red Notice. We do have corroborating documents. Even aside from that though, [Petitioner  
8 John Doe] has criminal history here in the United States after being released on a bond. This  
9 shows [Petitioner John Doe] -- [Petitioner John Doe]'s continued criminal misconduct while  
10 being in the United States for only a short period of time.

11 This also shows [Petitioner John Doe]'s inability to listen to Immigration Court orders  
12 where he is advised that he's being released on bond, but he cannot engage in criminal  
13 misconduct. The documents show that not only did [Petitioner John Doe] steal a – a truck from  
14 his prior place of employment, but that he also made threats to the owner of that establishment,  
15 which again goes to both danger and flight risk.

16 *Id.* Ultimately, DHS established that Petitioner is a gang member in his country of origin who  
17 orchestrated a hospital shooting before fleeing prosecution to the United States. DHS also established  
18 that in his country-of-origin Petitioner made threats of violence and, in the United States, Petitioner also  
19 made threats of violence — while on Immigration Court bond — to his employer (from whom Petitioner  
20 stole a vehicle). *Id.*

21 On 4/3/2025, Petitioner, after failing in his motion for bond, filed a notice of appeal to the Board  
22 of Immigration Appeals. Petitioner's administrative appeal is pending. ECF 23 at 17.

23 On 4/8/2025, the Immigration Judge issued a written Memorandum Disposition documenting the  
24 multiple bases supporting the jurist's finding that DHS had established, by clear and convincing  
25 evidence, that Petitioner posed both a danger to the community and a risk of flight. Appendix pp 30-38.

26 The Immigration Judge, in finding Petitioner a danger to the community and flight risk, did not  
27 simply rely on the Red Notice evidence — and its abundant police and investigative report corroboration  
28 — but primarily focused on Petitioner's recent criminal activity, especially considering that during the  
recent criminal activity he was on Immigration Court bond. *See id.*

The Court found that [Petitioner John Doe]'s criminal history reflects a significant danger  
to both persons and property. *Matter of N-A-M-*, 24 I&N Dec. 336, 343 (BIA 2007) ("Crimes  
against persons are more likely to be categorized as particularly serious."), overruled in part on  
other grounds by *Blandino-Medina v. Holder*, 712 F.3d 1338 (9th Cir. 2013); *Matter of Guerra*,  
24 I&N Dec. at 38 (stating a [Petitioner John Doe] seeking bond must establish that he "does not

1 present a danger to persons or property"). The record reflects the concerning facts underlying  
2 [Petitioner John Doe]'s theft offense. The charging document alleged [Petitioner John Doe] stole  
3 [REDACTED] without the consent of the owner. *See* Ex. 6 at 397-98; see also *id.* at 395  
4 (identifying the owner of the trucking business as Mr. [REDACTED]). However, Mr. [REDACTED]  
5 told police that [Petitioner John Doe] "threatened to kill [REDACTED]'s family if [REDACTED] did not give him  
6 \$20,000 a couple of days [before the theft]." *Id.* at 395. The Department also submitted evidence  
7 of [Petitioner John Doe]'s access to firearms, which increases the credibility of his threats. *See*  
8 Ex. 6 at 320-22. Moreover, courts have long acknowledged that the handling and dealing in  
9 firearms are "highly dangerous activities." *United States v. Dane*, 570 F.2d 840, 846 (9th Cir.  
10 1977). Thus, given the totality of the evidence in this matter, the Court finds [Petitioner John  
11 Doe]'s criminal history in the United States strongly weighs in favor of a dangerousness finding.

12 Appendix p 32. The Immigration Judge ultimately concluded that "both [Petitioner John Doe]'s theft  
13 offense and his alleged criminal activity in India were highly probative of his dangerousness in the  
14 instant bond proceeding." *Id.* The Immigration Judge further pointed out: "Importantly, the Red Notice  
15 alleges [Petitioner John Doe] engaged in extortion after he arrived in the United States and was granted  
16 bond." *Id.* (citation omitted).

17 Although the Immigration Judge — after finding clearly convincing evidence of dangerousness  
18 to the community — was not required to reach the issue of risk of flight, the Immigration Judge  
19 nevertheless found there was clear and convincing evidence of risk of flight. *See* Appendix p 37.  
20 (Immigration Judge concluding "even if [Petitioner John Doe] did not pose a danger to the community,  
21 the Court nonetheless determined that he posed a high risk of flight which could not be mitigated with  
22 any bond amount") citing *Matter of Siniauslws*, 27 I&N Dec. at 209 (listing factors that are "proper  
23 considerations in deciding whether [a non-citizen alien] is a flight risk," including "family ties and his  
24 possible eligibility for discretionary relief," as well as whether he has "a fixed address, a residence of  
25 long duration, a history of employment, and other community ties").

26 In finding clear and convincing evidence of flight, the Immigration Judge in essence pointed out  
27 that Petitioner John Doe has already established that he is a colossal failure on bond. The jurist, relying  
28 on the submitted evidence, found that Petitioner, after his conditional release from DHS custody on  
bond, was in fact arrested for larceny from his employer while on bond. Indeed, as regarding his  
employment history, Petitioner — while on Immigration Court bond — attempted to extort his employer  
(before stealing from his employer). Thus, the Immigration Court reasonably found Petitioner's  
demonstrated failure to comply with prior terms of his release significantly undermined the conclusion  
that he would abide by any conditions, including conditions to curb risk of flight, imposed by the

1 Immigration Court. Against this background, the Immigration Judge properly and additionally  
2 concluded there is insufficient evidence of rehabilitation and, by contrast, willful refusal to abide with  
3 court-imposed conditions of release. The Immigration Judge ultimately “found the record showed that  
4 [Petitioner John Doe] poses such a high flight risk that no amount of bond or combination of conditions  
5 could mitigate that risk.” Appendix p 37 (citing *Matter of Gnerra*, 24 I&N Dec. at 40 (listing factors  
6 relevant in a custody redetermination and noting the Court may “give greater weight to one factor over  
7 others, as long as the decision is reasonable”)). *Id.*

8 Accordingly, based on the “totality of the evidence” found by the Immigration Judge, the  
9 Immigration Judge “concluded that the Department had met its burden of establishing, by clear and  
10 convincing evidence, that [Petitioner John Doe]’s ongoing detention was justified because his release  
11 would pose a danger to the community and a significant risk of flight.” *Id.* at 37.

## 12 II. DISCUSSION

### 13 A. **THIS COURT LACKS JURISDICTION TO REVIEW THE IMMIGRATION 14 JUDGE’S DISCRETIONARY DETERMINATION.**

15 Petitioner does not claim that he failed to obtain a bond hearing. Rather, he is merely dissatisfied  
16 with the result in the bond hearing he received. *See* ECF 23 at 2, 10, 39. In this regard, while he  
17 complains of constitutional procedural due process violation in Immigration Court bond hearing  
18 proceedings, he instead simply demands this court re-assess and re-weigh evidence in the Immigration  
19 Court to compel a bond and release from custody. Indeed, instead of enforcement, Petitioner’s motion  
20 demands this district court-of-custody unlawfully conduct substantive *de novo* review of the  
21 Immigration Judge’s discretionary determination that he is a danger and flight risk. *See Martinez v.*  
22 *Clark*, 36 F. 4th 1219, 1224 (9th Cir. 2022).

23 Contrary to Petitioner’s demand for substantive review and for replaced Immigration Judge  
24 findings (*i.e.*, replacement of discretionary determinations), this district court-of-custody does not have  
25 substantive review jurisdiction (especially over Immigration Court findings of clear and convincing  
26 evidence of danger and flight risk). *Martinez*, 36 F. 4th at 1224 (remanding with instruction to dismiss  
27 for lack of jurisdiction). The Ninth Circuit in *Martinez* recognized the limited exception for habeas  
28 jurisdiction “over constitutional claims or questions of law” but found the district court’s assessment of

1 the claim as “a constitutional question” incorrect because “due process does not command that evidence  
2 be weighed a certain way.” *Id.* at 1227-1230 (underscore supplied).<sup>3</sup>

3 In this case, Petitioner’s motion to enforce claims are falsely characterized as constitutional  
4 procedural due process claims. *See* ECF 23 at 2, 39. In fact, all of Petitioner’s claims are directed to  
5 Immigration Court assessment of evidence, weight afforded to evidence, and discretionary  
6 determinations. *See e.g.*, ECF 23 at 12-24 (Petitioner complaining of any weight at all being given to  
7 DHS evidence as opposed to Petitioner’s evidence, Petitioner complaining of Immigration Court  
8 receiving all submitted evidence (to include Red Notice evidence), and *inter alia* Petitioner complaining  
9 that the Immigration Judge’s reasoning during the hearing did not meet his high standards).

10 Respondent submits that Petitioner’s jurist reasoning, evidentiary assessments, and weights  
11 afforded complaints are transparent attempts to circumvent the jurisdictional bar in *Martinez*, to include  
12 (among other false claims) that the Immigration Judge failed to hold DHS to the clear and convincing  
13 evidence standard, failed to assess Petitioner’s current danger to the community and flight, failed to  
14 consider alternatives to detention, failed to give Petitioner’s proffered witness evidence dispositive  
15 weight, and otherwise failed to apply bond hearing factors. Respondent submits, based on a plain  
16 reading of the Immigration Judge’s Memorandum Disposition, none of Petitioner’s claims have merit.  
17 *Martinez*, 36 F. 4th at 1230. *See also Hernandez v. Sessions*, 872 F. 3d 976, 990 (9th Cir. 2017)  
18 (holding that alternative release conditions should be considered when individuals “have been  
19 determined to be neither dangerous nor so great a flight risk as to require detention without bond”).

20 Here, Petitioner was afforded a bond hearing as required by this district court-of-custody’s  
21 preliminary injunction order. He raised no objection to the procedural due process afforded him during  
22 that Immigration Court hearing. *See* Appendix pp 4-22. His objections as to evidence were addressed  
23 and his complaints as to weight and assessment were considered. Now, at this district court-of-custody,  
24 he impermissibly challenges the Immigration Judge’s discretionary determinations (as if such were due  
25 process complaints). Such challenges, however, are not reviewable by this district court-of-custody.

26  
27 <sup>3</sup> *Martinez* considered the scope of a federal district court’s review when, like here, a petitioner  
28 was subject to mandatory detention under immigration law but afforded a bond hearing by a district  
court under a due process analysis. *Id.* at 1223.

1 And, even if this district court-of-custody could identify a judicially reviewable error in the Immigration  
2 Judge’s detention order — which it cannot under Ninth Circuit precedent — Petitioner articulates no  
3 authority that would permit the wide-reaching new relief that he seeks, *i.e.*, prohibiting detention  
4 outright or requiring a bond hearing through the district court.

5 Moreover, even if this district court-of-custody could conduct substantive review, in this case, as  
6 demonstrated by the Immigration Judge’s detailed Memorandum Disposition, careful attention to  
7 *Guerra* factors was given and danger and flight risk were properly determined. *See* Appendix pp 30-38.  
8 In this regard, the Ninth Circuit has identified factors to which Immigration Judge’s “should look” when  
9 determining whether a petitioner is a flight risk or danger to the community. *Singh v. Holder*, 638 F.3d  
10 1196, 1206 (9th Cir. 2011) (quoting *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065-66 (9th Cir. 2008)).  
11 However, consideration of each individual factor is not necessary: the factors are introduced with  
12 permissive language and “may include any or all of the following.” *Singh*, 638 F.3d at 1206 (quoting  
13 *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006).

14 **B. THIS COURT MUST DISMISS THE UNDERLYING § 2241 PETITION.**

15 The underlying petition must be dismissed for lack of jurisdiction. *Warth v. Seldin*, 422 U.S.  
16 490,498 (1975). Article III jurisdictionally limits the federal courts to deciding “cases” and  
17 “controversies.” To ensure that any matter presented to a federal court meets such requirement, this  
18 district court-of-custody must consider at least the doctrines of mootness, ripeness, and standing. *Kittel*  
19 *v. Thomas*, 620 F.3d 949, 951 (9th Cir. 2010). Also, the jurisdiction of federal courts is limited to  
20 “actual, ongoing cases or controversies.” *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990).  
21 “This case-or controversy requirement subsists through all stages of federal judicial proceedings,” which  
22 “means that, throughout the litigation, the plaintiff ‘must have suffered, or be threatened with, an actual  
23 injury traceable to the defendant and likely to be redressed by a favorable judicial decision.’” *Spencer v.*  
24 *Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis*, 494 U.S. at 477).

25 As relevant here, as his remedy demanded in the underlying petition and associated temporary  
26 restraining order (later preliminary injunction), Petitioner sought a bond hearing with the potential to be  
27 released from custody pending resolution of Immigration Court proceedings. *See generally* ECF 1, 2.

28 Following Petitioner’s success (a fully adjudicated TRO / preliminary injunction awarding him a

1 compelled bond hearing), such relief afforded to Petitioner renders any further § 2241 petition remedy,  
2 on the extant petition, moot.

3 While not obtaining the result of his choosing, Petitioner has obtained the relief he demanded by  
4 the petition. Otherwise, Petitioner cannot reasonably expect this district court-of-custody on the  
5 underlying petition to babysit and to coddle Petitioner through detained Immigration Court proceedings  
6 in perpetuity. Indeed, Petitioner has already moved on with his administrative appeal from the  
7 Immigration Judge findings that clear and convincing evidence demonstrates that he is a danger to the  
8 community and a flight risk. This district court-of-custody should thus dismiss the underlying collateral  
9 proceedings.

10  
11 Dated: April 16, 2025

MICHELE BECKWITH  
Acting United States Attorney

/s/ Michelle Rodriguez  
MICHELLE RODRIGUEZ  
Assistant United States Attorney