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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

**PETITIONER'S REPLY IN
SUPPORT OF MOTION TO
ENFORCE PRELIMINARY
INJUNCTION ORDER**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

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1 **INTRODUCTION**

2 Petitioner-Plaintiff, Mr. Doe, through undersigned counsel, hereby submits this Reply in
3 support of his Motion to Enforce Preliminary Injunction Order. Dkt. 23. In their combined
4 Opposition and Motion to Dismiss, Dkt. 31 (Opp'n), and Notice of Supplemental Authority, Dkt.
5 32, Respondents assert that (1) this Court may only review the Immigration Judge's (IJ) bond
6 decision for abuse of discretion, relying on *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir.
7 2024), (2) the IJ properly denied Petitioner's motion for custody redetermination, and (3)
8 proceedings are moot. Respondents are wrong on all three counts.

9 In this matter, the Court granted Petitioner a preliminary injunction pursuant to *Morrissey*
10 *v. Brewer*, 408 U.S. 471 (1972), and its progeny after determining that the U.S. Immigration and
11 Customs Enforcement (ICE) unlawfully re-arrested Petitioner on January 28, 2025, without first
12 providing him a pre-deprivation hearing. Dkt. 19 at 4, 14-15. The bond hearing ordered by this
13 Court was purely a creature of this Court's equitable authority to address a constitutional
14 violation. There exists no analogue in any Immigration and Nationality Act (INA) provision.
15 This Court's inherent authority to enforce its own orders is thus not limited in any way, and
16 Respondents suggestion otherwise is misplaced.

17 Furthermore, Respondents' Opposition merely perpetuates the IJ's errors committed
18 during the March 10 hearing, in her initial four-word written order issued later that day, and in
19 her post hoc Bond Memorandum (Memorandum) dated April 8, 2025. Dkt. 31-1 (App'x). Like
20 the IJ, Respondents have chosen to ignore dispositive evidence, mischaracterize the record, and
21 avoid engaging with Petitioner's arguments in any meaningful way, knowing full well that, were
22 they to commit to an honest evaluation of the evidence, the asserted narrative that Petitioner must
23 remain incarcerated would quickly unravel. The truth is that ICE did *not* re-arrest Petitioner
24 because it believed him to be a danger or a flight risk but because, following the change in
25 administration, senior ICE officials at each field office were directed to make at least seventy-
26 five arrests per day.¹ Petitioner deserves to be out of custody on bond and attending regular
27 check-in appointments with the Sacramento Field Office, as he had done for years without issue.

28 ¹ "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (Jan. 26, 2025),
<https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 Finally, because Petitioner remains unlawfully incarcerated in an immigration jail
2 following a sham hearing conducted by the IJ on March 10, which was completely devoid of any
3 pretense of due process, this case is not moot.

4 ARGUMENT

5 I. The Court's inherent authority to enforce its Order is not constrained in any way.

6 On March 3, 2025, this Court ordered that Petitioner be provided a constitutionally
7 compliant bond hearing where the government bore the burden of proof to show danger or flight
8 risk by clear and convincing evidence. Dkt. 19. The Court made clear that, if Respondents failed
9 to provide Petitioner such a hearing, Petitioner must be immediately released from custody.
10 Because Respondents violated the Court's Order, Petitioner must be released.

11 "The Supreme Court has long recognized that a district court possesses inherent powers
12 that are 'governed not by rule or statute but by the control necessarily vested in courts to manage
13 their own affairs so as to achieve the orderly and expeditious disposition of cases.'" *Cahill v.*
14 *Insider Inc.*, 131 F.4th 933, 938 (9th Cir. 2025) (citation omitted). "Those powers include 'the
15 inherent authority of a court to enforce its orders by whatever means.'" *Id.* The scope of this
16 enforcement power is particularly broad when, as here, constitutional rights are at issue. *See*
17 *Stone v. City & County of San Francisco*, 968 F.2d 850, 861 (9th Cir. 1992) ("Federal courts
18 possess whatever powers are necessary to remedy constitutional violations because they are
19 charged with protecting these rights."); *see also Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402
20 U.S. 1, 15 (1971) ("the scope of a district court's equitable powers to remedy past wrongs is
21 broad, for breadth and flexibility are inherent in equitable remedies.").

22 Notwithstanding this longstanding precedent, Respondents assert that this Court can only
23 review the IJ's bond denial for abuse of discretion.² Dkt. 32 (citing *Martinez v. Clark*, 124 F.4th
24 775, 779 (9th Cir. 2024) (*Martinez II*)). They are incorrect. Petitioner here raised a unique

25 ² In their Opposition, Respondents relied exclusively on *Martinez v. Clark*, 36 F. 4th 1219, 1224 (9th Cir. 2022)
26 (*Martinez I*)—a decision vacated by the Supreme Court—for their argument that this Court lacks jurisdiction to
27 review the IJ's decision. Opp'n at 6. On April 19, 2025, at 7:29 p.m., Respondents filed a notice of supplemental
28 authority, Dkt. 32, acknowledging their mistake and noting that, on remand, the Ninth Circuit held that courts can
review IJ bond decisions for abuse of discretion. *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024) (*Martinez II*).
However, this is not Respondents' only mistaken citation. There exist several others throughout the Opposition,
including the reference to 8 U.S.C. § 1231(b)(3)(B)(iii), which concerns whether an applicant committed a serious
nonpolitical crime outside the United States and says nothing about Red Notices. Opp'n at 4.

1 challenge—that his prior release on bond and the exercise of his liberty interest for five years
2 prevented Respondents from re-arresting him without first establishing, during a pre-deprivation
3 hearing, the necessity of his re-incarceration. Applying *Morrissey*, *Young v. Harper*, 520 U.S.
4 143 (1997), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), this Court held that “due process
5 clearly requires that Petitioner be given a hearing before his bond is revoked.” Dkt. 19 at 4. The
6 Court did not rely on any INA statute to render its decision. In fact, underlying the Court’s
7 judgment was the conclusion that the INA’s provisions as applied by Respondents—in
8 particular, 8 U.S.C. § 1226(b)—violated the Due Process Clause. In other words, they were
9 “repugnant to the constitution” and “void,” *Marbury v. Madison*, 5 U.S. 137, 177 (1803), in this
10 “particular application of the law,” *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 485
11 (1989) (explaining the Court’s preference for as-applied constitutional challenges to a statute).

12 The Ninth Circuit’s decision in *Martinez II* is therefore inapposite. There, the petitioner
13 challenged his prolonged incarceration under 8 U.S.C. § 1226(c)—not the legality of his arrest in
14 the first place—thus implicating, in the court’s view, 8 U.S.C. § 1226(e)’s limitation on judicial
15 review for a “discretionary judgment.” *Martinez II*, 12 F.4th at 782. Following a now-vacated
16 panel decision and a remand from the Supreme Court, *see Martinez v. Clark*, 144 S. Ct. 1339
17 (2024), the Ninth Circuit ultimately concluded that whether a noncitizen “is ‘dangerous’ for
18 immigration-detention purposes is a mixed question of law and fact and is reviewable as a
19 ‘question of law.’” *Martinez II*, 124 F.4th at 779 (citing *Singh v. Holder*, 638 F.3d 1196, 1202
20 (9th Cir. 2011) (“Although [8 U.S.C.] § 1226(e) restricts jurisdiction in the federal courts ... [,] it
21 does not limit habeas jurisdiction over constitutional claims or questions of law.”). The court
22 further held that district courts should apply an abuse of discretion standard when reviewing an
23 IJ’s bond determination in the context of a habeas petition. *Id.* The *Martinez II* court, however,
24 did not disturb binding precedent regarding a court’s authority to enforce its own orders, nor did
25 it analyze 8 U.S.C. § 1226(e) within that framework.

26 The limitation on review of “discretionary judgments” encompasses only judgments that
27 “app[ly] . . . this section.” 8 U.S.C. § 1226(e). And the restriction on setting aside detention,
28 bond, or parole decisions applies only to such decisions issued “under this section.” *Id.* “[T]his

1 section” unambiguously refers to § 1226. *Id.* Such “plain terms,” *Lora v. United States*, 599 U.S.
2 453, 458 (2023) (construing the language “under this subsection”), mean that only a
3 discretionary decision “apply[ing] [§ 1226]” or “under [§ 1226]” is subject to subsection (e)’s
4 restrictions, *see, e.g., NLRB v. SW Gen., Inc.*, 580 U.S. 288, 300 (2017) (explaining how
5 Congress uses the language “under this section” to “make precise cross-references”). “Congress
6 often drafts statutes with hierarchical schemes—section, subsection, paragraph, and on down the
7 line,” and when it does so, it knows how to “refer only to a particular subsection or paragraph.”
8 *SW Gen., Inc.*, 580 U.S. at 300. The same holds true here: “[b]y those plain terms [‘under this
9 section’], Congress applied the [jurisdictional limitation] only to [the specified actions] under
10 that [§]section.” *Lora*, 599 U.S. at 458; *see also West v. Gibson*, 527 U.S. 212, 221 (1999)
11 (explaining that “there is no reason to believe Congress intended more” where statute applied
12 only “under this section”). Thus, because Petitioner’s bond hearing was granted by this Court
13 pursuant to *Morrissey* and due process—not pursuant to 8 U.S.C. § 1226—subsection (e) is
14 inapplicable and the Court’s authority to enforce its own order remains unabated.

15 Moreover, the Supreme Court has repeatedly held that “otherwise valid” statutes cannot
16 stand in the way of a federal court’s remedial scheme if the action is essential to enforce the
17 scheme. *See, e.g., North Carolina State Bd. of Educ. v. Swann*, 402 U.S. 43, 45 (1971) (“[S]tate
18 policy must give way when it operates to hinder vindication of federal constitutional
19 guarantees.”). Accordingly, as established in Petitioner’s motion, Dkt. 23, the correct standard to
20 apply when deciding a motion to enforce is set forth in *Ramos v. Sessions*, 293 F. Supp. 3d 1021,
21 1029 (N.D. Cal. 2018), *vacated and remanded on other grounds sub nom. Ramos v. Garland*,
22 No. 18-15884, 2024 WL 933654 (9th Cir. Mar. 1, 2024). There, the court considered whether the
23 IJ had provided petitioner with a bond hearing that complied with its earlier order and held that it
24 had the authority to “review[] the IJ’s factual findings for clear error, and independently review[]
25 the facts, findings, and record to determine, de novo, whether those facts clearly and
26 convincingly demonstrate that [Petitioner] poses such a danger to the community that [h]e must
27 remain detained, including because no alternative to detention could protect the community.” *Id.*
28 at 1032-1033 (citing *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990) (courts “make

1 an independent examination of the record to determine whether the pretrial detention order is
2 consistent with the defendant's constitutional and statutory rights and arrive at our conclusion de
3 novo"). In this independent examination, "[d]oubts regarding the propriety of release are to be
4 resolved in favor of defendants." *Townsend*, 897 F.2d at 994. Only in "rare cases" should release
5 be denied. *Id.* Because Petitioner's motion arises from the same procedural posture as *Ramos* and
6 presents identical circumstances, this Court must undertake the same review.

7 **II. Even if the Court's inherent authority to enforce its own order were constrained,**
8 **the IJ abused her discretion by depriving Petitioner of a full and fair hearing**
9 **and in finding him a danger and a flight risk.**

10 **A. During the March 10 hearing, Petitioner repeatedly objected to the lack of**
11 **due process being afforded to him.**

12 As will be explained in further detail below, the IJ's numerous errors during the March
13 10 hearing and in her two subsequent written orders were even more egregious given that
14 Petitioner repeatedly objected to the lack of due process he received. While Respondents
15 bizarrely assert that Petitioner "raised no objection to the procedural due process afforded him
16 during that Immigration Court hearing," *Opp'n* at 7, this could not be further from reality. The
17 hearing transcript contains various instances where Petitioner contested the IJ's refusal to
18 provide any modicum of a full and fair hearing. For example, Petitioner specifically argued:

19 In the [R]ed [N]otice itself [] there's references to two first incident reports, 516 and
20 539. By the time the Haryana Police Department requested the [R]ed [N]otice,
21 [Petitioner] had been acquitted in both cases, and it withheld that information from
22 Interpol. In the acquittal for [] number [5]16, the witness at trial stated that the police
23 forced him to sign a blank piece of paper. That's the same statement provided by
24 [Petitioner's] mother and brother, that they were forced to sign blank pieces of paper,
25 which were then turned into quote/unquote "admissions" that they identified
26 [Petitioner's] voice on a recording that has never been disclosed to us. So [] these
27 documents are not reliable. There's clear evidence that there are misstatements
28 throughout them. If you look at some of the witness statements provided, at least two of
them are completely identical to one another[...]And it's the same two doctors alleging
the same two crimes. And there's been no evidence actually provided to us. The
[D]epartment has known about these allegations since February 2023, and it has never
submitted anything more than these police reports that are just unreliable. For that
reason, [the] police reports alone cannot serve as a basis to deny [bond]. They don't
serve as a basis to show guilt, particularly here when they're inherently and internally

1 inconsistent.³

2 Second Sinodis Decl. at Exh. H (Transcript) at 8:24-10:5. And:

3 [Petitioner] has the right to a full blown evidentiary hearing, Your Honor. This -- this is
4 not a customary [INA §] 236[a] bond hearing. We have the right to present evidence
5 and testimony, particularly here, given that the information submitted by the department
6 is unreliable, full stop. There's no reason to reject expert declarations from three
7 individuals, and in – alone these police reports cannot rise to the level of clear and
8 convincing evidence.

9 ...

10 The allegations that [Petitioner] stole a truck were never proven. The allegations that he
11 threatened anyone were never proven, nor even charged. And he hasn't had the
12 opportunity to discuss any of this because the Court won't hear testimony. And the
13 photos, there's an explanation for them. But again, absent testimony and the right to be
14 heard, we're in a position where [all] we have[are] these inherently unreliable reports.

15 *Id.* at 12:8.

16 Nevertheless, the IJ failed to address the points raised by Petitioner during the hearing or
17 in her two subsequent written orders. She instead faulted Petitioner for not filing his own written
18 declaration—though she provided him no notice that a written declaration was required and that
19 testimony would be completely disallowed—and accept without inquisition DHS's evidence,
20 thereby flipping the burden on its head in clear violation of this Court's March 3 Order.

21 **B. Respondents do not contest that the IJ abused her discretion when she
22 admitted the Red Notice and the underlying police reports over Petitioner's
23 objections without permitting cross-examination.**

24 The Fifth and Fourteenth Amendments extend to noncitizens physically present in the
25 United States. *Mathews v. Diaz*, 426 U.S. 67, 77 (1975). “Due process requires ... at a minimum,
26 includes a reasonable opportunity to present and rebut evidence and to cross-examine
27 witnesses[.]” *Grigoryan v. Barr*, 959 F.3d 1233, 1240 (9th Cir. 2020). The INA further provides
28 respondents a statutory right to examine adverse evidence, present favorable evidence, and cross-
examine government witnesses. INA § 240(b)(4)(B). An opportunity to confront and cross-

³ Because of their inherently unreliability, police reports are generally excluded from evidence. F. R. Evid. 803(B). The rule's legislative history indicates that: “the reason for this exclusion is that the observations by police officers at the scene of the crime or the apprehension of the defendant are not as reliable as observations by public officials in other cases because of the adversarial nature of the confrontation between police and the defendant in criminal cases.” Reports of “law enforcement personnel” included in Federal Rule of Evidence 803(8) are generally regarded as unreliable if prepared in an adversarial setting. *U.S. v. Orozco*, 590 F.2d 789, 793 (9th Cir. 1979); see also *U.S. v. Orellana-Blanco*, 294 F.3d 1143 (9th Cir. 2002) The Ninth Circuit has likewise excluded a report prepared by an INS inspector during the interrogation of a noncitizen at the border, where the suspicion was alien smuggling and the setting adversarial and investigatorial in nature. *U.S. v. Pena-Gutierrez*, 222. F.3d. 1080 (9th Cir. 2000).

1 examine “is even more important where the evidence consists of the testimony of individuals ...
2 who, in fact, *might be perjurers or persons motivated by malice, vindictiveness, intolerance,*
3 *prejudice, or jealousy.*” *Ching v. Mayorkas*, 725 F.3d 1149, 1158 (9th Cir. 2013).

4 An individual in a bond hearing has full constitutional rights to cross-examine
5 government witnesses and evidence, particularly where there is any indication that the
6 government’s evidence is unreliable. There is such an indication here. In the analogous context
7 of pre-trial detention, the Ninth Circuit has assumed that, when a defendant offers information
8 that the government’s proffered evidence is incorrect, the judge is required to allow the
9 defendant to cross-examine the government’s witnesses. *United States v. Winsor*, 785 F.2d 755,
10 757 (9th Cir. 1986). Other courts of appeals have held that, even when Congress has authorized a
11 judicial officer to consider hearsay evidence in a detention hearing, the judge has a “duty to
12 require more when tendered hearsay evidence does not rise to the required level of reliability,”
13 including by permitting cross-examination of witnesses. *United States v. Accetturo*, 783 F.2d
14 382, 389 (3d Cir. 1986).

15 In this matter, during the March 10 hearing, the IJ deprived Petitioner of his right to fully
16 and fairly litigate whether his freedom from physical restraint must be restored. The IJ prevented
17 Petitioner from exercising his statutory and due process right to cross-examine the witnesses
18 against him. 8 U.S.C. § 1229a(b)(4)(B)); *see also* 8 C.F.R. § 1240.10(a)(4) (respondent will have
19 a reasonable opportunity to examine and object to the evidence against him); *see also Alcaraz-*
20 *Enriquez v. Garland*, 19 F.4th 1224, 1231 (9th Cir. 2021) (quoting *Saidane v. INS*, 129 F.3d
21 1063, 1066 (9th Cir. 1997)). Despite uncontradicted sworn statements from Petitioner’s mother
22 and brother detailing how they were tortured by Indian police until they signed blank pieces of
23 paper which were then turned into false witness statements, the IJ admitted DHS’s evidence over
24 Petitioner’s objection and without permitting cross-examination. *See* Second Sinodis Decl. at
25 Exh. H (Transcript), at 11:12-17; App’x at 31. The IJ did this without even mentioning the expert
26 report from Dr. Cynthia Mahmood, wherein she states that [REDACTED]
27 [REDACTED] *id.* at Exh. F at Tab
28 A, or acknowledging that Petitioner has twice been acquitted by criminal courts in India due to

1 complainants and witnesses testifying that Petitioner had not engaged in any criminal misconduct
2 and that [REDACTED]

3 [REDACTED] against Petitioner, *see generally id.* at Exh. H (Transcript); *id.* at Exh. B, Tabs I, J
4 (Declarations of Petitioner’s Mother and Brother); App’x (no mention of evidence that [REDACTED]
5 [REDACTED]).

6 Because Petitioner presented substantial evidence to indicate that the Red Notice and
7 underlying police reports were unreliable—both in written submissions prior to the hearing and
8 at the hearing—the IJ committed clear legal error when she prevented him from conducting any
9 cross-examination. The IJ had a duty to demand that DHS produce witnesses in connection with
10 their proffered evidence, yet she failed to do so. For this reason alone, the March 10 hearing
11 provided to Petitioner violated the Court’s Order that he receive due process, and he must
12 therefore be released from custody.

13 **C. The IJ abused her discretion by refusing to hear crucial testimony from**
14 **Petitioner and his witnesses during the March 10 hearing.**

15 The IJ also abused her discretion by refusing, without any rational basis, to hear critical
16 testimony from Petitioner and his witnesses at the March 10 hearing. This clear error was
17 exacerbated by the IJ’s decision to fault Petitioner in her post hoc Memorandum for not filing
18 “his own written declaration” where he “expressed remorse for his actions,” though she never
19 notified him of such a requirement and there is none. App’x at 34. Had Petitioner been permitted
20 to present testimony, as due process required, he and his witnesses would have been able to
21 explain why the allegations against him are meritless and the IJ would have granted bond.

22 During the March 10 hearing, at no point did the IJ offer a reasoned explanation why she
23 refused to permit testimony—because none existed. Although the IJ cited to the Immigration
24 Court Practice Manual as authority for declining to hear testimony, Second Sinodis Decl. at Exh.
25 H (Transcript) at 13: 8-11 (citing Chapter 9, Section (e)(vi)), the Immigration Court Practice
26 Manual pertains to routine bond hearings under 8 U.S.C. § 1226(a)⁴ and not circumstances, like
27 those presented here, where the government unlawfully arrested a noncitizen in violation of due

28 ⁴ Under 8 U.S.C. § 1226(a), the noncitizen bears the burden to establish why they should be released. *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006).

1 process and must establish, by clear and convincing evidence, the necessity of their continued
2 incarceration. Dkt. 19 at 4, 14-15. When Petitioner repeatedly requested the full-blown
3 evidentiary hearing to which he was entitled, the IJ simply responded, “[a]gain, I made my
4 decision.” Second Sinodis Decl. at Exh. H (Transcript) at 12:8-14, 14:20. Although the Practice
5 Manual states IJs have discretion to hear testimony during regular bond hearings, that discretion
6 is constrained by the demands of due process and, as relevant here, the Court’s Order that
7 Petitioner receive a constitutionally compliant bond hearing.

8 **i. The IJ erred when she refused to hear Petitioner’s testimony, then**
9 **faulted him for not filing a “written declaration.”**

10 It is apparent from the IJ’s statements during the March 10 hearing that she questioned
11 Petitioner’s credibility, the opinions of his experts, and the veracity of the statements made by
12 his mother and brother in their sworn affidavits about how they were tortured by Indian police
13 because of their relationship to Petitioner. *See* Second Sinodis Decl. at Exh. B at Tab I, J
14 (Declarations of Petitioner’s Mother and Brother); Exh. D (Expert Reports). This is all the more
15 reason why the IJ should have heard witness testimony and allowed Petitioner to testify on his
16 own behalf. “Due process principles prohibit an IJ from declining to hear relevant testimony
17 because of a prejudgment about the witness’s ‘credibility or the probative value of [the]
18 testimony.’” *Lopez-Umanzor v. Gonzales*, 405 F.3d 1049, 1056 (9th Cir. 2005).

19 The Supreme Court has long held that “no person shall be deprived of his liberty without
20 opportunity, at some time, to be heard.” *Yamataya v. Fisher*, 189 U.S. 86, 100–01 (1903); *see*
21 *also Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J.,
22 concurring) (“[T]he right to be heard before being condemned to suffer grievous loss of any
23 kind, even though it may not involve the stigma and hardships of a criminal conviction, is a
24 principle basic to our society.”). Ninth Circuit precedent similarly requires that, “[i]n *any*
25 *contested administrative hearing*, admission of a party’s testimony is particularly essential to a
26 full and fair hearing where credibility is a determinative factor[.]” *Oshodi v. Holder*, 729 F.3d
27 883, 889-90 (9th Cir. 2013) (en banc) (emphasis added). The IJ’s refusal to permit Petitioner to
28 be heard through sworn testimony thus violated his right to due process and this Court’s Order.

1 *Id.* (citing *Mathews*, 424 U.S. at 343–44); *accord U.S. v. Davis*, 845 F.2d 412, 414–
2 15 (2d Cir.1988) (defendants are entitled to testify on their own behalf and present evidence to
3 demonstrate that bail revocation is not merited).

4 Nearly a month after the March 10 hearing, the IJ issued a post hoc Memorandum that
5 attempted to provide an explanation for her arbitrary decision to not hear any witness testimony,
6 stating that she “determined that the evidence in the documentary record was sufficient to
7 facilitate a fully informed decision in this matter, and thus that witness testimony was not
8 necessary.” App’x at 30. As an initial matter, this reasoning was not set forth at the hearing nor
9 in the IJ’s first written order issued later that day. Second Sinodis Decl. at Exh. H (Transcript);
10 Exh. I (First Written Order, writing only “Denied, because Danger/Flight”). Even if the IJ had
11 offered a timely explanation for her decision, relying on DHS’s contested and inherently
12 unreliable evidence without permitting Petitioner or his witnesses to be heard was a clear abuse
13 of discretion, particularly given that this Court ordered ICE to carry the burden by clear and
14 convincing evidence. This is especially true given that the IJ simultaneously ignored highly
15 probative and potentially dispositive evidence demonstrating that Petitioner should be released
16 from custody. *Cole v. Holder*, 659 F.3d 762, 771-72 (9th Cir. 2011).

17 The IJ’s refusal to allow Petitioner to testify clearly prejudiced him, as she later faulted
18 him for not submitting a written statement. App’x at 33. In her post hoc Memorandum issued on
19 April 8, the IJ discredited Petitioner because he “did not submit his own written declaration,
20 much less one that expressed remorse for his actions during the incident underlying his theft
21 offense.” *Id.* Yet, the IJ never notified Petitioner that he needed to file a written declaration, and
22 no such requirement exists.⁵ Additionally, the IJ spent significant time analyzing unproven
23 allegations related to Petitioner’s sole arrest in the United States—allegations which the DA
24 never charged. *Id.* at 32 (stating, *inter alia*, that Petitioner “threatened to kill Bassi’s family”).⁶
25 As Petitioner was never even charged with this offense, he has never had the opportunity (or
26

27 ⁵ In removal proceedings, the BIA has held that noncitizens are not required to submit declarations. *See, e.g., Matter of C-A-R-R-*, 29 I&N Dec. 13 (BIA 2025); *Matter of Interiano-Rosa*, 25 I&N Dec. 264 (BIA 2010).

28 ⁶ In doing so, the IJ overlooked clear BIA precedent holding that it would be error to “give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein.” *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995).

1 need) to contest the factual allegations against him, and the IJ denied him the forum to do so. *See*
2 Second Sinodis Decl. at Exh. H (Transcript) at 11:18 (because the IJ refused to hear testimony,
3 Petitioner could not provide any explanations on his own behalf).

4 Similarly, the IJ relied on photos of Petitioner with firearms submitted by ICE, but
5 expressly refused Petitioner the opportunity to explain the context for these photos at the hearing.
6 App'x at 32 (“The Department also submitted evidence of Respondent’s access to firearms,
7 which increases the credibility of his threats.”). Accepting ICE’s evidence at face value while
8 denying Petitioner the chance to provide an explanation is a clear abuse of discretion and a
9 violation of due process. *See* Second Sinodis Decl. at Exh. H (Transcript) 18:14-22 (“And he
10 hasn’t had the opportunity to discuss any of this because the Court won’t hear testimony. And the
11 photos, there’s an explanation for them. But again, absent testimony and the right to be heard,
12 we’re in a position where [all] we have [are] these inherently unreliable reports.”).

13 **ii. The IJ arbitrarily denied Petitioner’s right to present dispositive**
14 **expert testimony regarding** [REDACTED]

15 The IJ further erred when she deprived Petitioner of his right to present expert testimony.
16 Dr. Mahmood and Dr. Bromund would have testified regarding [REDACTED]’s

17 [REDACTED]
18 [REDACTED] Second Sinodis Decl. at Exh. E (Witness List). The IJ’s error was further
19 compounded by her lack of analysis of both reports. Despite issuing two written decisions, the IJ
20 never mentioned Dr. Mahmood’s expert report at all, *id.* at Exh. I (First Written Decision);
21 App'x at 30-38 (Memorandum), and relegated her analysis⁷ of Dr. Bromund’s report to one
22 sentence in a footnote, App'x at 31, n.3. Where, as here, the government’s documentation has
23 been undermined by evidence of widespread corruption on the part of [REDACTED]
24 including the use of torture to obtain witness statements from Petitioner’s own family members,
25 the IJ—at a minimum—abused her discretion when she wholesale relied on the Red Notice and
26 police reports to deny bond without even attempting to grapple with Petitioner’s substantial

27 _____
28 ⁷ As set forth *infra*, Section II.D., the IJ completely miscomprehends Dr. Bromund’s report, dismissing his expert
opinion on the reliability of the Red Notice and underlying Indian police reports because “the Red Notice contained
sufficient identifying information related to Respondent.” App'x at 31, n.3.

1 counterevidence, which included Dr. Mahmood’s and Dr. Bromund’s expert reports.

2 **D. By ignoring probative evidence and mischaracterizing the record, the IJ**
3 **abused her discretion and violated Petitioner’s due process rights.**

4 The record makes plain that, during the March 10 hearing and in her first written order
5 issued that same day, the IJ ignored an overwhelming amount of probative evidence counseling
6 in favor of Petitioner’s release. Second Sinodis Decl. at Exh. H, I (Transcript and First Written
7 Order). But the IJ’s unreasoned decision-making does not end here. Now, in her belated post hoc
8 Memorandum—issued after Petitioner appealed to the BIA and filed the instant Motion—the IJ’s
9 efforts to shore up the holes in her prior oral and one sentence, four-word orders remain replete
10 with significant errors and omissions that demonstrate she did not review all the evidence before
11 her. *See App’x* at 30-38. Specifically, the IJ still ignores: (1) the expert reports from Dr.
12 Mahmood and Dr. Bromund; (2) the sworn affidavits from Petitioner’s mother and brother; (3)
13 evidence of Petitioner’s full compliance with ICE’s reporting requirements for two years
14 preceding his re-arrest; (4) ICE’s decision to not take Petitioner into custody for two years
15 despite knowing of the Red Notice and underlying criminal allegations in India; and (5) evidence
16 showing that the two criminal cases charged against Petitioner before he fled India resulted in
17 acquittals because “complainants” testified he did nothing wrong and “witnesses” testified about



18
19 Contrary to Respondents’ contention, the fact that the IJ marked all exhibits into the
20 record does not “establish[] all submitted evidence had been reviewed and considered.” *Opp’n* at
21 3. As precedent holds, “where there is *any* indication that the [agency] did not consider all of the
22 evidence before it, a catchall phrase does not suffice, and the decision cannot stand. Such
23 indications include misstating the record and failing to mention highly probative or potentially
24 dispositive evidence.” *Cole*, 659 F.3d at 771–72 (emphasis added). This is precisely what
25 occurred here. The IJ severely mischaracterized Petitioner’s criminal history, failed to accurately
26 or meaningfully assess Petitioner’s expert reports and the record evidence of police torture, and
27 failed to mention other highly probative and dispositive evidence.

28 First, the IJ inaccurately wrote in her post hoc Memorandum that “this record lacks

1 sufficient evidence of rehabilitation following [Petitioner’s] criminal convictions.” App’x at 35.
2 Petitioner, however, has *zero* criminal convictions in the United States or anywhere else in the
3 world. Petitioner’s completion of a diversion program following his arrest for theft in the United
4 States does not constitute a “conviction” under the INA because he never entered a guilty or nolo
5 contendere plea on the record. 8 U.S.C. § 1101(a)(48)(A); *Matter of W*, 5 I&N Dec. 759 (BIA
6 1954); *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). Further, the IJ’s decision to hold him
7 accountable for a crime he did not commit (and for allegations in the police report that were
8 never even charged by the DA), in a case that resulted in full dismissal, contradicted
9 longstanding BIA precedent “to give due regard to executive as well as judicial clemency and
10 not hold aliens responsible for crimes which have been ‘forgiven’ by the locality having
11 jurisdiction over their punishment.” *Matter of C-Y-C-*, 3 I&N Dec. 623, 629 (BIA 1949).⁸

12 Similarly, although the IJ briefly noted Petitioner had been acquitted of several charges
13 listed in the Red Notice, she faulted Petitioner for not demonstrating remorse in the same breath.
14 App’x at 33. (“Respondent presented evidence indicating he was acquitted of the crimes
15 identified in the Red Notice”) (citing *Matter of Roberts*, 20 I&N Dec. 294, 302 (BIA 1991)
16 (noting the respondent did not show genuine rehabilitation where, among other things, he
17 “appeared to be more intent on showing that he was ‘set up’ for the crime of which he was
18 convicted, than in expressing remorse for his acts.”)). Petitioner has consistently maintained that
19 the allegations against him are baseless and are instead part of a pattern of harassment by the
20 Indian government, which is well known for targeting dissidents with specious criminal charges.
21 Second Sinodis Decl. at Exh. F at Tab A (Expert Report of Dr. Mahmood). The IJ’s
22 determination that he must therefore express remorse for alleged criminal conduct he never
23 committed is preposterous. Her decisions reflect what was clear from the outset of the hearing—
24 she had prejudged Petitioner’s credibility and had no interest in providing a full and fair hearing.⁹

25
26 ⁸ The IJ’s post hoc Memorandum cites *Jesus Melendez v. Gonzalez* as support, but that case dealt with whether the
27 noncitizen qualified for treatment under the Federal First Offender’s Act even though he had twice been convicted
28 of a controlled substance offense. 503 F.3d 1019, 1025-27 (9th Cir. 2007). It said nothing about bond and did not
arise within the context of a hearing ordered by a district court following ICE’s unlawful arrest of a noncitizen.

⁹ What is more, the IJ’s flight risk analysis alarmingly shows that she has also prejudged the merits of Petitioner’s
claims for asylum, withholding of removal, and protection under the Convention Against Torture, even though he

1 Second, the IJ completely ignored the extensive evidence of police torture of Petitioner’s
2 family members, who appeared at the hearing via video and submitted sworn declarations in
3 advance. *Id.* at Exh. B at Tabs I, J (Declarations of Petitioner’s Mother and Brother). In her post
4 hoc Memorandum on April 8—having had more than a month to review the evidence—the IJ
5 still did not address the evidence that [REDACTED]

6 [REDACTED]
7 [REDACTED] *Id.* Their uncontroverted
8 statements undermine the credibility of *any* of the allegations against Petitioner from India and
9 provide strong corroboration for his asylum claim. These sworn declarations were further
10 corroborated by two Judgments of Acquittal that were issued in cases that were presented against
11 Petitioner before he fled India in 2019. In each case—First Incident Report (FIR) 516 and FIR
12 539—an Indian criminal court acquitted Petitioner of any wrong because (1) the complainants
13 testified that Petitioner did not commit any crime and (2) witnesses testified that [REDACTED]

14 [REDACTED]
15 [REDACTED] *See* Second Sinodis Decl. at Exh. F at Tab C (Judgment of Acquittal in FIR
16 No. 516); *see also id.* at Tab N (Judgment of Acquittal in FIR No. 539). The IJ did not have
17 discretion to simply ignore this evidence, and doing so was clear error. *Cole*, 659 F.3d 771–72.

18 Third, the IJ largely ignored Petitioner’s expert reports, failing to even mention the
19 affidavit from Dr. Mahmood. To the extent the IJ did briefly reference Dr. Bromund’s report, she
20 grossly mischaracterized it. In her post hoc Memorandum, the IJ brushed aside Dr. Bromund’s
21 analysis because, “while the author of this report expressed doubts regarding the reliability of the
22 Red Notice, he did not contest that the document contained identifying information related to
23 Respondent.” App’x at 31. As explained in the Motion to Enforce, contesting whether the Red
24 Notice referred to Petitioner was not the point of Dr. Bromund’s report, and if the IJ thought his
25 report was offered for that reason, she missed the mark by a wide margin. As detailed in his
26 report, Dr. Bromund highlighted that information within the Red Notice demonstrates that
27 Petitioner has been targeted by [REDACTED] and
28 has yet to receive his merits hearing, which is not set to begin until April 25, 2025. App’x at 37 (stating
“Respondent’s limited prospects for relief increase his flight risk[.]”).

1 added that the numerous procedural irregularities in the Red Notice—including the addition of
2 charges for which Petitioner had been acquitted and administrative charges that provide no basis
3 for issuing a Red Notice—“create doubt about whether the Red Notice naming Petitioner reflects
4 an honest and careful investigation of the fact that was unbiased by political considerations.”
5 Second Sinodis Decl. at Exh. D at Tab A (Expert Report of Dr. Bromund).

6 **III. These proceedings are not moot.**

7 A party asserting mootness carries a heavy burden to show that no effective relief
8 remains for the Court to provide. *GATX/Airlog Co. v. United States District Court*, 192 F.3d
9 1304, 1306 (9th Cir. 1999). The conditions under which a suit will be found moot are stringent.
10 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000). A case
11 will be deemed moot only when “interim relief or events have *completely and irrevocably*
12 *eradicated* the effects of the alleged violation.” *County of Los Angeles v. Davis*, 440 U.S. 625,
13 631 (1979) (emphasis added). Conversely, a case is not moot if the Court can “nevertheless
14 provide meaningful relief.” *Center for Biological Diversity v. Lohn*, 511 F.3d 960, 964 (2007).

15 Respondents contend that this case is moot because Petitioner obtained the relief sought
16 in his underlying petition. Opp’n at 8 (falsely asserting that Petitioner only sought “a bond
17 hearing with the potential to be released from custody pending resolution of immigration
18 proceedings.”). Not so. There still exists a live case or controversy because, as Petitioner has
19 established, Respondents failed to provide him with the constitutionally compliant hearing
20 ordered by this Court. Dkt. 19 at 14-15. Indeed, the wholly inadequate hearing that Petitioner
21 received only underscores the necessity of this Court granting his motion to enforce and ordering
22 his immediate release. Furthermore, in the Court’s order granting a preliminary injunction, the
23 Court did not rule on Petitioner’s requests for (1) outright release or (2) a bond hearing
24 conducted by this Court as opposed to the IJ. Dkt. 1 at ¶¶ 1, 112; *see also id.* at 34-35 (Prayer for
25 Relief). Accordingly, this matter is not moot.

26 **CONCLUSION**

27 For all the aforementioned reasons, the Court should grant Petitioner’s Motion and order
28 his immediate release from custody.

1 Dated: April 20, 2025

Respectfully submitted,

2 /s/ Johnny Sinodis

3 Johnny Sinodis

4 Oona Cahill

5 Attorneys for Petitioner

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