

1 BRENDON WOODS (CA SBN #189910)  
Public Defender

3 RAHA JORJANI (CA SBN #240941)  
Managing Immigration Attorney

4 KELSEY MORALES (CA SBN #312362), *Designation of Counsel for Service*  
Immigration Attorney

5 Office of the Alameda County Public Defender

6 312 Clay Street, 2nd Floor

Oakland, CA 94607

7 Telephone: 510 268-7429

8 Facsimile: 510 268-7462

Email: [kelsey.morales@acgov.org](mailto:kelsey.morales@acgov.org)

9 *Pro Bono Attorneys for Petitioner*

11 **UNITED STATES DISTRICT COURT FOR THE**

12 **EASTERN DISTRICT OF CALIFORNIA**

13 Y.S.G.,

14 Petitioner,

15 vs.

16  
17 TONYA ANDREWS, in official capacity,  
Facility Administrator of Golden State Annex;  
18 ORESTES CRUZ, in official capacity, Field  
Office Director of ICE's San Francisco Field  
19 Office; TODD M. LYONS, in official capacity,  
Acting Director of ICE, KRISTI NOEM, in  
20 official capacity, Secretary of the U.S.  
Department of Homeland Security; PAM  
21 BONDI, in official capacity, Attorney General  
of the United States;

22 Respondents.

Case No.: 2:25-cv-01884-SCR

PETITIONER'S NOTICE OF MOTION AND  
MOTION TO ENFORCE PRELIMINARY  
INJUNCTION; MEMORANDUM OF  
POINTS AND AUTHORITIES

Date: October 16, 2025

Time: 10:00AM

Before: Honorable Judge Sean C. Riordan

Immigration Habeas Case

27 PETITIONER'S NOTICE OF MOTION AND MOTION TO ENFORCE PRELIMINARY  
28 INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES

CASE NO. 2:25-CV-01884-SCR

**TABLE OF CONTENT**

1

2 **NOTICE OF MOTION AND MOTION**.....1

3 **INTRODUCTION**.....2

4 **RELEVANT STATEMENT OF FACTS AND PROCEDURAL HISTORY** .....2

5

6 **LEGAL STANDARD** .....4

7 **ARGUMENT**.....5

8

9 **I. Respondents Violated the Court’s Injunction When the IJ Erroneously Denied**

10 **Bond Despite DHS’s Failure to Prove Danger and Flight Risk by Clear and Convincing**

11 **Evidence, and this Court Should Order Petitioner Released.** ..... 5

12 **A. The Clear and Convincing Standard is a Heavy Burden that Must be**

13 **Demonstrated in Fact, Not in Theory, Because the Loss of Freedom from Confinement**

14 **is Significant.**..... 5

15 **B. The Immigration Judge Applied the Wrong Standard at the Bond Hearing.** ..... 7

16 **C. The Immigration Judge Failed to Hold the Government to the Clear and**

17 **Convincing Standard as to Present Danger.**..... 9

18 **D. The Immigration Judge Failed to Hold the Government to the Clear and**

19 **Convincing Standard as to Flight Risk.** ..... 13

20 **E. Respondents Also Violated the Court’s Injunction by Failing to Provide Petitioner**

21 **with A Hearing Before the Proper Venue and a Neutral Adjudicator.** ..... 15

22 **F. Had the Immigration Judge Properly Analyzed the Record, Petitioner Would**

23 **Have Been Granted Bond or Alternatives to Detention.** ..... 17

24 **II. The Court Should Order Petitioner’s Immediate Release from Custody Because**

25 **He Remains Unlawfully Detained.** ..... 19

26

27 **CONCLUSION** ..... 20

28 **PETITIONER’S NOTICE OF MOTION AND MOTION TO ENFORCE PRELIMINARY**  
**INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES**

**TABLE OF AUTHORITIES**

<b>Federal Cases</b>	<b>Pages</b>
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979) .....	12
<i>Blandon v. Barr</i> , 434 F. Supp. 3d 30 (W.D.N.Y. 2020).....	10, 11
<i>California Dep't of Soc. Servs. v. Leavitt</i> , 523 F.3d 1025 (9th Cir. 2008) .....	4
<i>Castellanos-Luna v. Pompeo</i> , 2019 WL 3027645 (W.D. Wash. July 11, 2019).....	15
<i>Chavez-Rivas v. Olsen</i> , 207 F. Supp. 2d 326 (D.N.J. 2002).....	11
<i>Cole v. Holder</i> , 659 F.3d 762 (9th Cir. 2011) .....	7, 13, 14
<i>Elias v. Gonzales</i> , 490 F.3d 444 (6th Cir. 2007) .....	15
<i>Franco-Rosendo v. Gonzales</i> , 454 F.3d 965 (9th Cir. 2006) .....	4
<i>Guillermo M. R. v. Kaiser</i> , 2025 WL 1983677 (N.D. Cal. July 17, 2025) .....	9
<i>Hangarter v. Paul Revere Life Ins. Co.</i> , 289 F.Supp.2d 1105 (N.D.Cal.2003).....	4
<i>Hechavarria v. Whitaker</i> , 358 F. Supp. 3d 227 (W.D.N.Y. 2019).....	12
<i>Islam v. Gonzales</i> , 469 F.3d 53 (2d Cir. 2006) .....	16
<i>Judulang v. Chertoff</i> , 562 F. Supp. 2d 1119 (S.D. Cal. 2008) .....	4, 19

1	<i>Kharis v. Sessions,</i>	
2	2018 WL 5809432 (N.D. Cal. Nov. 6, 2018) .....	13
3	<i>Lefkowitz v. Cunningham,</i>	
4	431 U.S. 801 (1977) .....	11
5	<i>Lopez v. Doll,</i>	
6	2018 WL 6696611 (M.D. Pa. Dec. 20, 2018) .....	14
7	<i>Martinez v. Clark,</i>	
8	124 F.4th 775 (9th Cir. 2024).....	4, 7, 6
9	<i>Mathon v. Searls,</i>	
10	623 F. Supp. 3d 203 (W.D.N.Y. 2022).....	7, 8, 12, 19
11	<i>Mau v. Chertoff,</i>	
12	562 F. Supp. 2d 1107 (S.D. Cal. 2008) .....	4, 19
13	<i>Mondaca-Vega v. Lynch,</i>	
14	808 F.3d 413 (9th Cir. 2015).....	5
15	<i>Nat’l Res. Def. Council, Inc. v. Pritzker,</i>	
16	828 F.3d 1125 (9th Cir. 2016).....	5
17	<i>Ngo v. INS,</i>	
18	192 F.3d 390 (3d Cir. 1999) .....	9
19	<i>Obregon v. Sessions,</i>	
20	2017 WL 1407889 (N.D. Cal. Apr. 20, 2017).....	5, 6, 18
21	<i>Paredes-Urrestarazu v. INS,</i>	
22	36 F.3d 801 (9th Cir. 1994).....	11
23	<i>Ramos v. Sessions,</i>	
24	293 F. Supp. 3d 1021 (N.D. Cal. 2018).....	4, 10, 19
25	<i>Reyes-Melendez v. INS,</i>	
26	342 F.3d 1001 (9th Cir. 2003).....	15
27	<i>Sales v. Johnson,</i>	
28	2017 WL 6855827 (N.D. Cal. Sept. 20, 2017).....	4, 18, 19
	<i>Simmons v. United States,</i>	
	390 U.S. 377 (1968) .....	11
	PETITIONER’S NOTICE OF MOTION AND MOTION TO ENFORCE PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIESiii	

1		
2	<i>Singh v. Holder</i> ,	
3	638 F.3d 1196 (9th Cir. 2011) .....	5, 6, 9, 14
4	<i>Su Hwa She v. Holder</i> ,	
5	629 F.3d 958 (9th Cir. 2010) .....	15
6	<i>Swann v. Charlotte-Mecklenburg Bd. of Ed.</i> ,	
7	402 U.S. 1 (1971) .....	19
8	<i>Tadevosyan v. Holder</i> ,	
9	743 F.3d 1250 (9th Cir. 2014) .....	4
10	<i>Tijani v. Willis</i> ,	
11	430 F.3d 1241 (9th Cir. 2005) .....	5
12	<i>United States v. Bryan</i> ,	
13	2010 WL 4312866 (E.D. Cal. Oct. 25, 2010).....	4
14	<i>United States v. Patriarca</i> ,	
15	948 F.2d 789 (1st Cir. 1991).....	5
16	<i>United States v. Salerno</i> ,	
17	481 U.S. 739 (1987) .....	6
18	<b>Agency Cases</b>	
19	<i>Matter of Guerra</i> ,	
20	24 I & N Dec. 37 (BIA 2006).....	6, 8, 10, 17
21	<i>Matter of Sugay</i> ,	
22	17 I&N Dec. 637 (BIA 1981).....	13
23	<i>Matter of Y-S-L-C</i> ,	
24	26 I&N Dec. 688 (BIA 2015).....	17
25	<b>Statutes</b>	
26	8 U.S.C. § 1226(a) .....	6, 8, 12
27	<b>Regulations</b>	
28	8 C.F.R. § 1003.10(b) .....	16
	8 C.F.R. § 1003.19(d) .....	17
	PETITIONER’S NOTICE OF MOTION AND MOTION TO ENFORCE PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIESiv	

**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that, on Thursday, October 16, 2025, at 10:00am before the Honorable Sean Riordan in Courtroom 27, Petitioner will move the Court to enforce its Preliminary Injunction Order, and order Respondents to immediately release Petitioner from immigration 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 Lydia Sinkus 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 before they redetained Petitioner 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 July 14, 2025, and order his immediate release from unlawful detention.

Dated: September 19, 2025

Respectfully submitted,

/s/Kelsey Morales  
Kelsey Morales

1  
2 **INTRODUCTION**

3 Petitioner  ("Petitioner") moves the Court to enforce its Order  
4 Granting Preliminary Injunction. The Court enjoined Respondents from redetaining Petitioner  
5 unless and until they provide him with "notice of the reasons for the revocation of his release and  
6 a hearing before an immigration judge" at which the government bears the burden of proof by  
7 clear and convincing evidence to justify whether detention is warranted. While Respondents  
8 provided Petitioner with a hearing before the Immigration Judge, that hearing was perfunctory at  
9 best. Not only was the hearing held at the wrong venue hundreds of miles away from Petitioner's  
10 place of residence, but the Immigration Judge failed to demonstrate impartiality, misapplied the  
11 law, and failed to hold the government to its heavy burden of proof. As such, the Immigration  
12 Judge's decision denying Petitioner bond and the government's subsequent detention of  
13 Petitioner based on that decision constitute violations of this Court's Order. Accordingly,  
14 Petitioner must be immediately released from immigration custody.

15 **RELEVANT STATEMENT OF FACTS AND PROCEDURAL HISTORY**

16 On July 14, 2025, the Court issued a preliminary injunction, ordering Respondents  
17 release Petitioner from ICE custody. *See* ECF No. 14 at 10 (hereinafter "Order"). The Order also  
18 enjoining Respondents from detaining Petitioner unless and until they provide him with notice of  
19 the reasons for the revocation of bond, a hearing before an immigration judge at which the  
20 government bears the burden of proof by clear and convincing evidence to determine whether  
21 detention is warranted. *Id.*

22 Petitioner was released from custody that same day. Sinkus Decl. at ¶ 3. He returned to  
23 his residence in Patterson, California. *Id.* DHS placed him back on an ankle monitor and under  
24 ISAP supervision. *Id.*

25 On August 14, 2025, the Department of Homeland Security ("DHS") moved for a pre-  
26 deprivation bond hearing before the Adelanto Immigration Court. *See* Exh. A, DHS's Motion for  
27 a Pre-Deprivation Hearing. In their motion, DHS stated that it sought Petitioner's detention  
28 because he had accrued over thirty violations ATD program violations, had expressed to ERO

1 officers that he would no longer comply with the program, and because of his May 2024 arrest  
2 for driving on a suspended license and without an interlock device. Exh. A-2. The Immigration  
3 Court scheduled a bond hearing for August 27, 2025, before Immigration Judge Katie G.  
4 Mullins. *See* Exh. B, Hearing Notice.

5 Petitioner filed a motion to change venue to the non-detained Immigration Court with  
6 authority over his residence – in compliance with longstanding agency practice and recently  
7 issued policy memorandum. Exh. D, Petitioner’s Motion to Change Venue. He also filed over  
8 100 pages of evidence in support of his continued release, including his declaration, letters of  
9 support from his family members, employers, and friends, as well as evidence of his discharge  
10 from parole and successful participation in rehabilitative programs. *See generally* Exh. E,  
11 Petitioner’s Documents in Opposition of Re-Detention.

12 On August 27, 2025, Petitioner and counsel appeared via Webex for the bond hearing, as  
13 did DHS counsel. At hearing, the IJ admitted evidence, took argument from the parties, and  
14 declared she would not take testimony. Sinkus Decl. at ¶ 10. The IJ also stated that she denied  
15 Petitioner’s Motion to Change Venue. *Id. See also* Exh. F, Order Denying Motion to Change  
16 Venue. At the close of the hearing, the IJ stated that DHS had met its burden of proof as to both  
17 Petitioner’s risk of danger and flight. Sinkus Decl. at ¶ 10. *See also* Exh. G. IJ Bond Order.

18 Petitioner filed an appeal with the IJ’s order that same day. *See* Sinkus Decl. at ¶ 11; Exh.  
19 H, Filing Receipt for Bond Appeal. The IJ subsequently issued memorandum followed. *See* Exh.  
20 I, IJ’s Written Bond Memorandum (hereinafter “Memo”). Bond appeals typically take three to  
21 six months for the BIA to adjudicate. Sinkus Decl. at ¶ 11. Petitioner has yet to receive a briefing  
22 scheduled from the BIA. *Id.*

23 DHS redetained Petitioner on September 4, 2025. Sinkus Decl. at ¶ 12. His ISAP agent  
24 requested that he appear at an ISAP office, providing several pre-textual reasons for the  
25 appointment. *Id.* Petitioner reported as instructed and was arrested by DHS. He is currently  
26 detained by ICE at the Mesa Verde ICE Processing Facility in Bakersfield, California. *Id.*

**LEGAL STANDARD**

A court has “inherent power to enforce its judgments[.]” *California Dep’t of Soc. Servs. v. Leavitt*, 523 F.3d 1025, 1033 (9th Cir. 2008). “[H]abeas courts are empowered to make an assessment concerning compliance with their mandates.” *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1126 (S.D. Cal. 2008). This includes continuing jurisdiction to enforce an injunction. *United States v. Bryan*, No. CIV. 2:04-2363 WBS, 2010 WL 4312866, at \*1 (E.D. Cal. Oct. 25, 2010) (quoting *Hangerter v. Paul Revere Life Ins. Co.*, 289 F.Supp.2d 1105, 1107 (N.D.Cal.2003)).

District courts in the Ninth Circuit and across the country regularly grant detained noncitizen habeas petitioners release under adequate conditions of supervision when the government fails to provide them with a hearing consistent with prior orders of the court. *See, e.g., Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1119 (S.D. Cal. 2008) (ordering petitioner’s release when “the evidence before the IJ failed, as a matter of law, to prove flight risk or danger pursuant to the Court’s order”); *Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, at \*7 (N.D. Cal. Sept. 20, 2017) (ordering petitioner’s release under appropriate conditions of supervision when IJ failed to correctly apply clear and convincing standard in violation of court order); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1036 (N.D. Cal. 2018), *vacated and remanded sub nom. Ramos v. Garland*, No. 18-15884, 2024 WL 933654 (9th Cir. Mar. 1, 2024) (granting motion to enforce and ordering release under appropriate conditions of supervision when government failed to meet clear and convincing burden).

Federal courts have jurisdiction to review whether the agency properly applied the burden of proof. *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024). The agency abuses its discretion when it acts “arbitrarily, irrationally, or contrary to the law” and when it “fails to provide a reasoned explanation for its actions.” *Tadevosyan v. Holder*, 743 F.3d 1250, 1252–53 (9th Cir. 2014). The agency also abuses its discretion where it fails to consider probative evidence. *Franco-Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006). A “standard of review which asks only whether the IJ announced the correct legal standard is insufficient.” *Ramos*, 293 F.

1 Supp. 3d at 1030. *See Nat'l Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir.  
2 2016) (“An agency acts contrary to the law when it gives mere lip service or verbal  
3 commendation of a standard but then fails to abide the standard in its reasoning and decision.”

## 4 ARGUMENT

### 5 **I. Respondents Violated the Court’s Injunction When the IJ Erroneously Denied 6 Bond Despite DHS’s Failure to Prove Present Danger and Flight Risk by Clear and 7 Convincing Evidence, and this Court Should Order Petitioner Released.**

#### 8 **A. The Clear and Convincing Standard is a Heavy Burden that Must be 9 Demonstrated in Fact, Not in Theory, Because the Loss of Freedom from 10 Confinement is Significant.**

11 The clear and convincing standard requires that evidence must establish “an abiding  
12 conviction that the truth of [the] factual contentions at issue is highly probable.” *Mondaca-Vega*  
13 *v. Lynch*, 808 F.3d 413, 422 (9th Cir. 2015) (en banc). This standard sets a “high burden and  
14 must be demonstrated in fact, not ‘in theory.’” *Obregon v. Sessions*, No. 17-CV-01463-WHO,  
15 2017 WL 1407889, at \*7 (N.D. Cal. Apr. 20, 2017) (quoting *United States v. Patriarca*, 948 F.2d  
16 789, 792 (1st Cir. 1991) (affirming the district court’s conclusion that, although the government  
17 had demonstrated the defendant was a Mafia Boss and that, “in theory a Mafia Boss was an  
18 intimidating and highly dangerous character,” it had failed to show that “this Boss posed a  
19 significant danger”)).

20 The clear and convincing standard is used “because it is improper to ask the individual to  
21 share equally with society the risk of error when the possible injury to the individual—  
22 deprivation of liberty—is so significant.” *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir.  
23 2011) (cleaned up). “Rather, when a fundamental right, such as individual liberty, is at stake, the  
24 government must bear the lion’s share of the burden.” *Tijani v. Willis*, 430 F.3d 1241, 1245 (9th  
25 Cir. 2005) (Tashima, J., concurrence). Indeed, “[d]eprivation of liberty should be a rare  
26 circumstance for non-citizens in immigration detention, reserved only for those who are a threat  
27 to national security or poor bail risks.” *Obregon*, 2017 WL 1407889 at \*9. In the context of  
28 criminal pretrial detention, the Supreme Court has provided that the clear and convincing

1 evidence standard requires the government to prove that the detained person “presents an  
2 identified and articulable threat to an individual or the community,” and “no conditions of  
3 release can reasonably assure the safety of the community or any person.” *United States v.*  
4 *Salerno*, 481 U.S. 739, 750-51 (1987).

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

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

13  
14 24 I & N Dec. 36, 40 (BIA 2006). The decision was made in the context of discretionary relief  
15 under 8 U.S.C. § 1226(a) and establishes the floor for factors to consider in immigration custody  
16 determinations.

17 More specifically regarding a dangerousness determination, even where an individual has  
18 been convicted of a criminal offense, criminal history “alone will not always be sufficient to  
19 justify denial of bond on the basis of dangerousness.” *Singh*, 638 F.3d at 1206. The  
20 “extensiveness of criminal activity, the recency of such activity, and the seriousness of the  
21 offenses” are also contemplated. *Matter of Guerra*, 24 I & N Dec. at 40. Courts must also  
22 consider the “remoteness” of the criminal activity as well as “intervening events that might  
23 undermine a finding of dangerousness.” *Obregon*, 2017 WL 1407889, at \*7 (collecting cases).

24 Federal courts have jurisdiction to review whether the agency properly applied the burden  
25 of proof. *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024) (asserting jurisdiction over  
26 whether the immigration judge applied the correct burden of proof). The Court in *Martinez*  
27 further noted that where the agency decision raises “red flags,” it need not take the agency “at its

1 word” that it applied the correct standard. *Id.* A “red flag” indicates that something is “amiss,”  
2 such as where the agency misstates the record, fails to mention probative and potentially  
3 dispositive evidence, or fails to mention or apply relevant case law in its decision. *Id.* at 1230-31  
4 (citing *Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011)). Where, “there is any indication that  
5 the agency did not consider all the evidence before it, a catchall phrase does not suffice, and the  
6 decision cannot stand. *See Cole*, 659 F.3d at 771.

7 Here, the IJ’s gesture to the clear and convincing evidence standard does not insulate her  
8 decision from reversal, given the many “red flags” in her ruling. Petitioner challenges both the  
9 standard applied by the IJ and her determination that DHS met its high burden of proof. *Mathon*  
10 *v. Searls*, 623 F. Supp. 3d 203, 214 (W.D.N.Y. 2022). *See infra* Section I.B (standard) and  
11 Sections I.C-I.D (evidentiary burden). For these reasons, as well as those more fully explained  
12 below, this Court must find that Respondents have failed to comply with the Court’s preliminary  
13 injunction order and grant Petitioner’s immediate release from custody.

14 **B. The Immigration Judge Applied the Wrong Standard at the Bond Hearing.**

15 The Court ordered that, in the event DHS sought to detain Petitioner, it must provide him  
16 with a constitutionally compliant bond hearing. Order at 10. This included notice of the reasons  
17 for the revocation of bond, a hearing before an IJ to determine whether detention is warranted,  
18 and that DHS bear the burden of proof by clear and convincing evidence. *Id.* The basis for this  
19 order and process provided by the Court was the Fifth Amendment’s Due Process Clause. *Id.* at 5  
20 (“[T]he Court finds the Due Process Clause does require additional procedures in the instant  
21 case.”); *id.* at 6 (“[T]he Court examines what process is necessary to ensure any deprivation of  
22 that protected liberty interest accords with the Constitution.”).

23 The IJ did not apply the correct law in Petitioner’s custody hearing. Memo at 4. “The IJ  
24 made numerous comments indicating that she was, in fact, treating the hearing as a bond  
25 redetermination request governed by immigration law as determined by the BIA.” *Mathon*, 623  
26 F. Supp. 3d at 214. For instance, she said that she has “extremely broad discretion in deciding  
27 whether to release a [noncitizen] on bond” and that she “may choose to give greater weight to

1 one factor over others, as long as the decision is reasonable.” Memo at 4 (citing *Matter of*  
2 *Guerra*, 24 I&N. Dec. at 40). But that is not what the constitution mandates. As explained in  
3 *Mathon*, “*Guerra*, however, is an agency case setting forth the factors an IJ should consider in  
4 reviewing a detainee’s request for discretionary release under [ ] 8 U.S.C. § 1226(a). The IJ’s  
5 statements that she had ‘discretion’ to determine ‘whether a detainee merits release from bond,’  
6 likewise disregarded the Court’s instructions that the government—not *Mathon*—must bear the  
7 burden of proof.” 623 F. Supp. 3d at 214. Here, the Court did not provide the IJ with discretion  
8 to determine whether Petitioner should be released. Rather, the Court ordered that DHS bear the  
9 burden; the IJ statement that she has discretion to review factors demonstrates that she did not  
10 comply with the order.

11 Additionally, the IJ failed to properly follow the scope of review. DHS moved to re-  
12 detain Mr. Soto Garcia on the alleged basis that he had amassed violations of his release  
13 requirements, stated he would no longer comply, and that he had a new arrest in 2024. *See* Exh.  
14 A-2. This Court ordered a hearing prior to any such re-detention, in part due to the “serious  
15 concerns about the basis for [Petitioner’s] redetention.” Order at 8. Mr. Soto Garcia contested the  
16 fact of these alleged violations and sought proof of the basis for DHS’s assertions on this issue.  
17 *Id.* As a result, this Court ordered that Mr. Soto Garcia be provided “notice for the reasons of the  
18 revocation of his bond.” *Id.* at 10. The IJ failed to fulfil the purpose of the hearing, which was to  
19 provide for a neutral adjudicator to evaluate the “basis for [Mr. Soto Garcia’s] redetention.” Dkt.  
20 14 at 8. Indeed, DHS offered no admissible evidence regarding the reasons stated by agency for  
21 Mr. Soto Garcia’s re-detention—the alleged ATD violations and statement regarding compliance  
22 with release conditions, as well as Petitioner’s May 2024 arrests. That is because the IJ excluded  
23 DHS’s evidence related to ATD violations and DHS’s failed to include any evidence relating to  
24 the circumstances of Petitioner’s May 2024. *See generally* Exh. A (with the I-213 excluded,  
25 DHS’s only evidence regarding the arrests was a rap sheet). Without evidence of DHS’s stated  
26 reasons for redetention, the IJ improperly focused her decision on evidence of prior convictions  
27 already weighed by the prior IJ and found to not meet the clear and convincing evidence standard

1 supporting detention. *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at  
2 \*8 (N.D. Cal. July 17, 2025) (recognizing due process concerns inherent in permitting ICE to  
3 detain noncitizens absent any change in circumstances). In failing to focus on DHS’s alleged  
4 changed circumstances, the IJ failed to properly follow the scope of review as outlined by this  
5 Court’s order.

6  
7 **C. The Immigration Judge Failed to Hold the Government to the Clear and  
Convincing Standard as to Present Danger.**

8 In her memorandum, the IJ wrote, “[g]iven the seriousness and extensiveness of his  
9 criminal history, combined with his demonstrated willingness to reoffend, the Court is left with  
10 serious concerns about the further deleterious impact that [Petitioner] would have on the safety  
11 and security of the community were he released from [DHS] custody.” Memo at 7. This  
12 determination is flawed in three keys ways.

13 1. The IJ’s decision focuses nearly exclusively on the nature and severity of Petitioner’s  
14 past conduct to support a finding that he is a current danger to the community. Memo at 5-7. It is  
15 undisputed that DHS has the burden to establish Petitioner’s current dangerousness as opposed to  
16 past dangerousness. Memo at 4 (recognizing that DHS bears burden to show Petitioner “poses” a  
17 danger). The focus on whether someone “poses” a danger to the community makes clear that the  
18 dangerousness inquiry is forward-looking.

19 Danger must be assessed on a current basis before the agency may order someone’s  
20 continued detention. *See Singh*, 638 F.3d at 1206 (“[A] conviction could have occurred years  
21 ago, and the [noncitizen] could well have led an entirely law-abiding life since then. In such  
22 cases, denial of bond on the basis of criminal history alone may not be warranted.”); *see also*  
23 *Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999) (“Due process is not satisfied...by rubberstamp  
24 denials based on temporally distant offenses. The process due even to excludable [noncitizens]  
25 requires an opportunity for an evaluation of the individual’s current threat to the community and  
26 his risk of flight.”). Due process also requires the agency to consider the “remoteness” of any  
27 criminal history, as well as “whether the immigrant’s circumstances have changed such that

1 criminal conduct is now less likely.” *Ramos*, 293 F. Supp. 3d at 1030. This principle is also  
2 enshrined in agency case law. *See Matter of Guerra*, 24 I&N at 40 (requiring IJs to consider the  
3 “recency” of any criminal activity).

4 Here, the IJ’s decision reflects a preoccupation with Petitioner’s prior criminal history,  
5 with significant attention devoted to reconsidering criminal history addressed at his prior bond  
6 hearing. Memo at 5-7.<sup>1</sup> This is shown also through the IJ’s failure to consider the “recency”  
7 factor in reviewing Petitioner’s criminal history. The IJ fails to note the time that has passed  
8 since the convictions she is concerned about and the lack of any recidivism of these types of  
9 offenses. There is also no evidence in the record that Petitioner poses a risk of repeated sex  
10 offenses or DUIs. Indeed, the IJ failed to consider probative evidence of Petitioner’s over two  
11 years of time in the community following his prior release on bond, working and supporting  
12 himself and his family, which is reversible error in of itself. *See generally* Exh. E; *see also*  
13 *Blandon v. Barr*, 434 F. Supp. 3d 30, 39 (W.D.N.Y. 2020) (noting that courts have found that the  
14 clear and convincing threshold is not met when the IJ “relies entirely on facts surrounding the  
15 petitioner’s conviction does not discuss individualized post-conviction facts regarding  
16 petitioner’s behavior, dangerousness, or risk of flight”). This was contrary to law.

17 2. Despite DHS raising Petitioner’s 2024 arrest as a changed circumstances as it relates to  
18 danger, the IJ erroneously required Petitioner, not DHS, to proffer evidence related to the arrest.  
19 *See* Memo at 5 (“[Petitioner] did not describe the facts and circumstances of these arrests in his  
20 written declaration and has not, for example, professed himself to be factually innocent.”); *id.* at  
21 7 (“The Court again reiterates that [Petitioner] has not, for example, argued that he is factually  
22 innocent *vis a vis* these alleged violations.”). In so doing, the IJ improperly flipped the burden of  
23

24  
25  
26 <sup>1</sup> As mentioned above, Petitioner believes that the IJ’s consideration of his prior criminal history  
27 is outside the scope of the bond hearing, as it was previously considered by an IJ as insufficient  
28 to rise to clear and convincing evidence, and it was not the basis for which DHS moved to  
detain Petitioner. *See supra* Section B.

1 proof to Petitioner. *See Blandon v. Barr*, 434 F. Supp. 3d 30, 40 (W.D.N.Y. 2020) (“The IJ’s  
2 improper allocation of the burden of proof is further demonstrated by his emphasis on  
3 Petitioner’s failure to present evidence at the bond hearing.”).

4 Further, the IJ’s requirement that Petitioner provide evidence as to the underlying  
5 circumstances when he has pending charges and his criminal lawyer has advised him of his right  
6 to remain silent violates the unconstitutional choice doctrine. Exh. E-157, Letter from  
7 Petitioner’s public defender. This doctrine provides that “[n]o person should be required to  
8 forfeit one constitutionally protected right as the price for exercising another.” *Lefkowitz v.*  
9 *Cunningham*, 431 U.S. 801, 807-08 (1977). *See also Simmons v. United States*, 390 U.S. 377,  
10 394 (1968) (It is “intolerable that one constitutional right should have to be surrendered in order  
11 to assert another.”). But that is exactly what the IJ required – that Petitioner give up his Fifth  
12 Amendment right to remain silent to exercise his Fifth Amendment right to liberty from  
13 unconstitutional detention. This is error.

14 Indeed, any “serious concerns” that the IJ may have regarding Petitioner’s future conduct  
15 is due to DHS’s failure to provide any evidence regarding the underlying misdemeanor charges.  
16 As to these arrests, DHS only filed a rap sheet. *See* Exh. A-6-12. DHS did not file any charging  
17 document, nor any police or investigative reports associated with the arrest or charges. There is  
18 no evidence in the record that Petitioner committed these regulatory charges, or that even if he  
19 had, such conduct is demonstrative of clear and convincing evidence of dangerousness. Evidence  
20 of an arrest on a rap sheet is insufficient to meet the DHS’s heavy burden of establishing  
21 dangerousness. *See Paredes-Urrestarazu v. INS*, 36 F.3d 801, 816 (9th Cir. 1994) (“[W]e would  
22 be troubled if this were a case in which the Board found the *mere fact* of arrest probative of  
23 whether Petitioner had engaged in underlying conduct.”); *Chavez-Rivas v. Olsen*, 207 F. Supp.  
24 2d 326, 328, 328, 339-40 (D.N.J. 2002) (finding INS’s violated the petitioner’s due process  
25 rights by relying on “evidence of arrests for previous offenses, without any evidence that the  
26 petitioner in fact committed those crimes, in concluding that he is a danger to the community”).

27 That is because a charge or an arrest, without more, is proof of nothing. This derives from

1 the presumption of innocence, where one is “to judge an accused’s guilt or innocence solely on  
2 the evidence adduced at trial and not on the basis of suspicions that may arise from the fact of his  
3 arrest, indictment, or custody, or from other matters not introduced as proof at trial.” *Bell v.*  
4 *Wolfish*, 441 U.S. 520, 533 (1979). These principles have been recognized by the BIA in *Matter*  
5 *of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995), wherein the agency stated “[W]e are  
6 hesitant to give substantial weight to an arrest report, absent a conviction or corroborating  
7 evidence of the allegations contained therein.” These principles are especially true here, as these  
8 charges do not imply a danger to persons or property, use of a weapon or unlawful substance, or  
9 any sort of violent conduct. In fact, there is no assertion that anyone was injured or that any  
10 property was damaged at all when Petitioner was arrested at a gas station. Exh. E-8. For the IJ to  
11 find the existence of pending, regulatory, non-violent charges—which DHS has been aware of  
12 since May 2024 (for which they did not move to redetain him when he appeared at his check-ins  
13 in November 2024 or March 2025, *see* Exh. E-51) and for which DHS presented no evidence at  
14 the bond hearing—sufficient to establish DHS’s burden of proof flies in face of this country’s  
15 constitutional protections and legal precedent.

16 3. The clear and convincing standard is not met when the IJ has “serious concerns” about  
17 Petitioner’s future conduct. “If the clear and convincing standard means what it says, it cannot  
18 permit detention based on mere speculation that an [noncitizen’s] release might possibly pose a  
19 danger.” *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241 (W.D.N.Y. 2019). *See also Mathon*,  
20 623 F. Supp. 3d at 216 (“Concerns about what [a noncitizen] might or might not do if released  
21 may be enough to meet the standard of proof applicable to ‘typical’ § 1226(a) bond hearings it  
22 does not meet standard that was to be applied here.”) (internal citations omitted). That is because,  
23 even if the record shows that Petitioner might pose some risk of danger, that is not clear and  
24 convincing evidence of danger. To put another way, “if the IJ was ‘forced to speculate’ about  
25 whether [Petitioner] was a danger, then there was not clear and convincing evidence that  
26 [Petitioner’s] continued detention was necessary to serve the government’s interest in minimizing  
27 danger to the community.” *Hechavarria*, 358 F. Supp. 3d at 241. The IJ’s “serious concerns” is

1 nothing more than mere speculation about what she believes might occur if Petitioner were  
2 released. This is not sufficient to show that DHS met its heavy burden.

3 Each of the above errors independently establish that the IJ erred in determining that the  
4 government demonstrated clear and convincing evidence of dangerousness.

5 **D. The Immigration Judge Failed to Hold the Government to the Clear and**  
6 **Convincing Standard as to Flight Risk.**

7 In May 2023, IJ Riley determined that the government could not establish that Petitioner  
8 was an unmitigable flight risk and accordingly ordered his release upon the posting of a \$3,000  
9 bail. *See* Exh. A-24. At that time, Petitioner had an appeal pending with the BIA in his  
10 withholding-only case. Now, despite an established record of attendance at ICE check-ins and  
11 participation in ISAP monitoring, IJ Mullins determined that Mr. Soto Garcia was such a flight  
12 risk that no bond could mitigate this risk. *See* Exh. E-41, E-51. In so holding, IJ Mullins made  
13 several legal errors and failed to hold the government to the clear and convincing standard.

14 1. The IJ erred in making a new flight risk determination when the government failed to  
15 present evidence of changed circumstances. *Supra* Section I.B. Notably, the IJ did not admit the  
16 government's evidence of alleged monitoring violations. Memo at 3. As such, the government  
17 presented no new evidence to warrant a changed flight risk determination and the IJ erred in  
18 making a new flight risk determination. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981).

19 2. The IJ also failed to consider probative and meaningful evidence related to Mr. Soto  
20 Garcia's immigration case and his compliance with ICE/ISAP since he was released on bond.  
21 The failure to meaningfully consider highly probative evidence alone is reversible legal error.  
22 *See Cole v. Holder*, 659 F.3d 762, 771-72 (9th Cir. 2011) (“[W]here there is any indication that  
23 the BIA did not consider all of the evidence before it, a catchall phrase does not suffice, and the  
24 decision cannot stand. Such indications include misstating the record and failing to mention  
25 highly probative or potentially dispositive evidence.”); *Kharis v. Sessions*, No. 18-CV-04800-  
26 JST, 2018 WL 5809432, at \*10 (N.D. Cal. Nov. 6, 2018) (holding that “[d]ue process obligated  
27 the IJ to mention [highly probative] evidence” in a bond memorandum and as such, the agency's

1 failure to “expressly grapple with a substantial, well-supported argument” relating to bond  
2 violated due process).

3 Notably, the IJ did not consider, let alone mention, Mr. Soto Garcia’s evidence of  
4 compliance with parole requirements, ICE check-ins, and ISAP monitoring for the past two years  
5 of his release on bond. *See e.g.*, Exh. E-7-12 (Petitioner’s declaration, attesting to his  
6 participation in ISAP monitoring); E-14 (proof of discharge from parole); E-26 (completion of  
7 DUI classes); E-41 & E-51 (proof of attendance at ICE check-ins). This is legal error and an  
8 abuse of discretion. *Cole*, 659 F.3d at 771-72. There is no question that Mr. Soto Garcia’s  
9 compliance with probation and release conditions is probative and material to the question of  
10 flight risk and the viability of alternatives to detention. The IJ’s failure to consider this evidence  
11 – material and probative to the issue of flight risk is reversible error.

12 Further, the IJ erred in failing consider the fact that Mr. Soto Garcia secured counsel and  
13 filed a motion to remand with the BIA. Exh. E-6; E-114-117. Record evidence—also not  
14 considered by the IJ—demonstrates that noncitizens with counsel and pending applications for  
15 relief are likely to appear for court. Exh. E-132 (“The data reveal that individuals with counsel  
16 rarely failed to show up in court.”); E-133 (“Overall, 95% of all litigants with completed or  
17 pending applications for relief attended all of their court hearings between 2008 and 2018.”).  
18 Likewise, this failure is reversible legal error. *See Cole*, 659 F.3d at 772.

19 3. The IJ erred in determining that Mr. Soto Garcia’s immigration history—his placement  
20 in withholding-only proceedings, and limited eligibility for relief—is clear and convincing  
21 evidence of flight risk. *See Memo* at 8-9. Courts have rejected similar findings like this time and  
22 time again, as such determinations fail to rise to high standard of clear and convincing evidence  
23 or provide meaningful individualized review. *See Singh*, 638 F.3d at 1205 (rejecting similarly  
24 flawed reasoning that a final order of removal—a fact common to all detainees afforded *Casas*  
25 bond hearings—constituted clear and convincing evidence of flight risk); *Lopez v. Doll*, No.  
26 1:18-CV-1592, 2018 WL 6696611, at \*2 (M.D. Pa. Dec. 20, 2018) (“Mechanistic reliance on  
27 factors that are common to all § 1231(a)(5) detainees will not suffice.”). Similarly, for the same

1 reasons, the IJ erred in concluding that the denial of his applications for withholding of removal  
2 and CAT protection is further proof of Mr. Soto Garcia’s flight risk. *See* Memo at 9. This is  
3 because, under *Singh*, the denial of relief alone is insufficient to justify the denial of bond. *See*  
4 *Castellanos-Luna v. Pompeo*, No. C19-331 RSM, 2019 WL 3027645, at \*2 (W.D. Wash. July  
5 11, 2019) *vacated and remanded sub nom. Castellanos-Luna v. Blinken*, No. 19-35765, 2024  
6 WL 239162 (9th Cir. Jan. 18, 2024).<sup>2</sup>

7 4. Lastly, the IJ did not provide a reasoned explanation for why she believes that Mr.  
8 Soto Garcia “has shown a disregard for rules and regulations imposed by state authorities  
9 subsequent to his criminal convictions.” Memo at 9. However, due process requires a “minimum  
10 degree of clarity in dispositive reasoning.” *Su Hwa She v. Holder*, 629 F.3d 958, 963 (9th Cir.  
11 2010). The IJ did not cite to any evidence or provide any explanation; moreover, the evidence in  
12 the record—such as Mr. Soto Garcia’s parole discharge certificate and completion of DUI  
13 classes, for example—are dispositive of the exact opposite, that Mr. Soto Garcia has shown  
14 compliance with rules and requirements set forth by state authorities. *See* Exh. E-14, E-26.

15 Each of the above errors independently establish that the IJ erred in determining that the  
16 government demonstrated clear and convincing evidence of flight risk.

17 **E. Respondents Also Violated the Court’s Injunction by Failing to Provide**  
18 **Petitioner with A Hearing Before the Proper Venue and a Neutral**  
19 **Adjudicator.**

20 It is fundamental component of due process that immigration judges be neutral and  
21 impartial adjudicators. *See Reyes-Melendez v. INS*, 342 F.3d 1001, 1006-09 (9th Cir. 2003)  
22 (holding that “[a] neutral judge is one of the most basic due process protections” and the IJ erred  
23 by failing to act as a neutral fact finder); *Elias v. Gonzales*, 490 F.3d 444, 451 (6th Cir. 2007)  
24 (“An immigration judge has a responsibility to function as a neutral, impartial arbiter and must

---

25  
26 <sup>2</sup> Notably, the IJ who determined that a bond of only \$3,000 and ATD mitigated Petitioner’s risk  
27 of flight in 2023 was the same IJ who two months earlier had denied his applications for relief.

1 refrain from taking on the role of advocate for either party”); *Islam v. Gonzales*, 469 F.3d 53, 55  
2 (2d Cir. 2006) (noting the IJ’s job is to be neutral and not be an advocate for either party). *See*  
3 *also* 8 C.F.R. § 1003.10(b) (“In all cases, immigration judges shall seek to resolve the questions  
4 before them in a timely and impartial manner consistent with the Act and regulations.”).

5 Here, the IJ abdicated her role as a neutral adjudicator and engaged in biased conduct  
6 prejudicial to Petitioner in two key ways. First, the IJ failed to function as a neutral adjudicator in  
7 considering Petitioner’s motion to change venue. Exh. D. Established agency policy recognizes  
8 that cases of non-detained individuals should be heard on non-detained dockets at non-detained  
9 immigration courts. *See* PM 25-30, EOIR (April 25, 2025)<sup>3</sup> (“EOIR is henceforth authorized to  
10 clerically transfer all cases in which [a noncitizen] is released from DHS custody (from the  
11 detained docket of one Court to the non-detained docket of any other Court within EOIR’s  
12 system).”). However, despite this longstanding policy, the IJ denied Petitioner’s motion to  
13 change venue because he was recently detained at Golden State Annex, “over whose  
14 corresponding cases this Court typically presides.” Memo at 2. This ignores the fact that  
15 Petitioner was released and that the appropriate court—based on longstanding policy looking to  
16 court with jurisdiction over a noncitizen’s address—not the Adelanto Immigration Court, which  
17 is a detained court. The IJ’s violation of agency policy, which should be applied neutrally to all  
18 noncitizens, is demonstrative of her failure to act as an impartial adjudicator.

19 Second, the IJ acted as an advocate for the government when she took administrative  
20 notice of IJ Riley’s merits decision. Memo at 8, n.2. The government could have introduced the  
21

---

22  
23 <sup>3</sup> At <https://www.justice.gov/eoir/media/1398021/dl?inline>. *See also* PM 25-31, EOIR (May 9,  
24 2025) at <https://www.justice.gov/eoir/media/1399771/dl?inline> (explaining that “clerical  
25 transfer” is permitted “from a detained docket at one Immigration Court to a non-detained docket  
26 at another Immigration Court when [a noncitizen] is released from custody”); *c.f.* PM 25-49,  
27 EOIR (Sept. 15, 2025) at <https://www.justice.gov/eoir/media/1414126/dl?inline> (providing cases  
28 may be “clerically transferred” to the appropriate Immigration Court upon receipt of a Form I-  
830, change of address form and that the transfer “transfer must occur within 48 hours of  
notification of the [noncitizen’s] transfer”).

1 merits decision themselves but instead chose to file the IJ's summary order. *See* Exh. A-17.  
2 Finding that order insufficient, the IJ inserted herself into the role of the prosecutor, introduced  
3 the merits decision herself in contraventions of immigration law, and used it to advocate for the  
4 government's position, prejudicing Petitioner. Memo at 8, n.2 (resulting in four paragraph  
5 analysis of the import of the decision on the IJ's flight analysis); *see Matter of Y-S-L-C-*, 26 I&N  
6 Dec. 688, 691 (BIA 2015) (recognizing that even the mere appearance of bias implicates due  
7 process); *see also* Immigration Court Practice Manual at Section 9.3(e)(5) ("Since the Record of  
8 Proceedings in a bond proceeding is kept separate and apart from other Records of Proceedings,  
9 documents already filed in removal proceedings must be resubmitted if the filing party wishes  
10 them to be considered in the bond proceeding."); 8 C.F.R. § 1003.19(d).

11 The record shows that the IJ failed to act impartially and thus violated the Court's order  
12 to provide a constitutionally compliant hearing.

13 **F. Had the Immigration Judge Properly Analyzed the Record, Petitioner Would**  
14 **Have Been Granted Bond or Alternatives to Detention.**

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

18 Petitioner is clearly not a flight risk. He has resided in the United States since he was four  
19 years old and has significant family and community ties, including his two U.S. citizen brothers.  
20 *See* Exh. E-6, *see also* E-60-113, Letters of Support from Petitioner's family, friends, and  
21 supporters; *see also* Exh.E-194, Letter from Petitioner's girlfriend; E-196, Letter from  
22 Petitioner's mom. He graduated from Patterson High School, as well completed college courses.  
23 Exh. E-162, High School Diploma; E-164, College Certificate. He has a fixed address, living  
24 with his parents in Patterson. Exh. E-6. He has the support of multiple employers. *See* Exh. E-28  
25 (Petitioner "is out most dependable employee"); E-32 (Petitioner is "very hard working and  
26 always very kind and considerate of his team members").

27 Moreover, Petitioner complied with ICE's reporting requirements, appearing in person at

1 ICE check-ins on six occasions – June 14, 2024, November 29, 2023, March 20, 2024,  
2 November 29, 2024, March 20, 2025, and July 15, 2025. Exh. E-51. He also participated in the  
3 ISAP program, including attending in person office visits, and virtual home and office visits. *See*  
4 Exh. E-7-12.. Lastly, Petitioner has *pro bono* counsel and pending forms of immigration relief,  
5 including a U visa petition and applications for withholding of removal and CAT protection  
6 pending before the BIA. Exh. E-6.

7         Petitioner is likewise not a danger. While he has a criminal history, IJ Riley determined  
8 that criminal history did not rise to clear and convincing evidence of danger or flight risk. Exh.  
9 A-24. DHS acknowledges that the only changed circumstances as to danger here is an arrest and  
10 charges from over a year ago, for driving on a suspended license and failure to have an interlock  
11 device. Exh. A-11. The charges remain pending, and no conduct has been proven or admitted.  
12 The fact of the charges themselves are insufficient to establish clear and convincing evidence of  
13 danger. *Supra* Section I.C. This is especially true, when considering Petitioner’s successful  
14 discharge from parole in 2024 after a year managing both parole and ICE supervision, *see* Exh.  
15 E-24, participation in the HOPE program through parole – classes, treatment, and risk  
16 assessment prior to discharge from parole, Exh. E-23-24, completion of a year of DUI classes,  
17 Exh. E-26, receipt of work permit, Exh. E-38, and evidence that Petitioner has built a successful  
18 career in event production and was promoted to managing events. Exh. E-28, E-32. He also  
19 completed rehabilitative programming while in ICE custody. *See* Exh. E-166-174, Certificates of  
20 Completion.

21         Furthermore, there are many far less restrictive alternatives to detention that would be  
22 sufficient to protect the community from whatever perceived danger the government believes  
23 Petitioner poses, including an ankle monitor and mandatory check ins. *See Obregon*, 2017 WL  
24 1407889, at \*7 (critiquing the “little attention” given to whether “the least restrictive alternative  
25 was not further incarceration”); *Sales*, 2017 WL 6855827, at \*7 (ordering immigrant released on  
26 conditions “such as an ankle monitor and reporting requirements”). Given that Petitioner has an  
27 established history of complying with reporting requirements, these safeguards would be more

1 than sufficient to mitigate any perceived risk.

2 **II. The Court Should Order Petitioner’s Immediate Release from Custody Because He**  
3 **Remains Unlawfully Detained.**

4 In sum, Respondents violated this Court’s order in multiple ways. They denied Petitioner  
5 a hearing before a neutral adjudicator and before the proper venue. They denied Petitioner bond  
6 despite DHS’s utter failure to establish by clear and convincing evidence that he is a current  
7 danger or unmitigable flight.

8 As a result, Petitioner continues to be held in violation of the Constitution and should be  
9 released. Where an IJ has failed to hold a hearing that comported with due process following a  
10 district court order, courts have ordered release. For example, in *Mau*, the court initially ordered  
11 the government to provide the petitioner with a bond hearing. After the IJ committed “an error of  
12 law” by improperly “rel[ying] on two misdemeanor DUI convictions and one felony DUI  
13 conviction to deny bond,” the court ordered the petitioner released. *Mau*, 562 F. Supp. 2d at  
14 1118-19. With nearly identical procedural history, the court in *Judulang* ordered the petitioner  
15 released after finding that “the government did not meet [the] burden imposed” by the court’s  
16 prior order requiring a hearing. *Judulang*, 562 F. Supp. 2d at 1126-1127. *See Swann v. Charlotte-*  
17 *Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) (“Once a right and a violation have been shown,  
18 the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and  
19 flexibility are inherent in equitable remedies.”).

20 In fact, 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 orders of the court. *See, e.g.,*  
23 *Sales*, No. 16-CV-01745-EDL, 2017 WL 6855827, at \*7 (ordering petitioner’s release under  
24 appropriate conditions of supervision when IJ failed to correctly apply clear and convincing  
25 standard in violation of court order); *Ramos*, 293 F. Supp. 3d at 1036 (granting motion to  
26 enforce and ordering release under appropriate conditions of supervision when government  
27 failed to meet clear and convincing burden); *Mathon*, 623 F. Supp. at 218.

1 Respondents have had multiple opportunities to afford Petitioner the due process he is  
2 entitled to and have failed to do so at every turn. For that reason, Petitioner seeks this Court's  
3 intervention again. This Court should not permit Respondents to continue violating both  
4 Petitioner's due process rights and the orders of this Court. The Court should instead put an end  
5 to the unlawful incarceration of Petitioner by ordering his immediate release.

6 **CONCLUSION**

7 For all the above reasons, the Court should order Petitioner's immediate release from  
8 custody and enjoin Respondents from detaining him during the pendency of these proceedings.  
9 Without such an order, Petitioner will continue to suffer an unlawful deprivation of his liberty  
10 with no end in sight and with no constitutionally valid justification.

11  
12 Dated: September 19, 2025

Respectfully submitted,

13  
14 /s/Kelsey Morales  
15 Attorney for Petitioner  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27