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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JANE DOE,

Petitioner,

v.

CHRISTOPHER J. LaROSE, Senior Warden, Otay Mesa Detention Center; GREGORY J. ARCHAMBEAULT, Field Office Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No.: '25CV2201 W DDL

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION

1. Petitioner-Plaintiff Jane Doe ("Petitioner" or "Ms. Doe") brings this petition for writ of habeas corpus to remedy Respondents-Defendants' ("Respondents") arbitrary and unlawful detention in violation of the Immigration and Nationality Act ("INA"), the Administrative Procedures Act ("APA"), and the Fifth Amendment to the U.S. Constitution.

2. Ms. Doe is a 48-year-old woman with intellectual disabilities. She fled Cambodia as a refugee with her family when she was about two years old, and has lived in the United States for nearly 40 years. Nearly all of her immediate family members have since become naturalized U.S. citizens, but Ms. Doe could not join them because her intellectual disability prevented her from passing the civics exam.

3. On September 3, 2024, the Department of Homeland Security ("DHS") detained Ms. Doe when she reported for a check-in. She has been detained since that time, nearly one year ago. Ms. Doe cannot be removed from the United States, as she has a pending petition for review before the U.S. Court of Appeals for the Ninth Circuit, and a judicial stay of removal in place.

4. The Fifth Amendment's Due Process Clause mandates that civil detention serve a legitimate purpose—to mitigate flight risk and/or prevent danger to the community—neither of which is served by Ms. Doe's detention. This Court should review the IJ and BIA's decisions in Ms. Doe's bond proceedings, and find that the agency violated due process and the statute in assessing Ms. Doe's request for custody determination. Further, the IJ's decision denying bond misapplies the law and is arbitrary, irrational, and an abuse of discretion. Because Ms. Doe has been in detention for over 11 months without the government ever properly establishing that she is a flight risk or danger to the community, this Court should order her released. Alternatively, the Court should order Respondents to provide Ms. Doe a proper bond hearing that complies with due process and the statute, holds DHS to its burden of proof, and fairly considers the appropriate evidence.

JURISDICTION

5. Ms. Doe is currently detained in the custody of Respondents at Otay Mesa Detention Center in San Diego, California.

6. Jurisdiction is proper over a writ of habeas corpus pursuant to Art. 1 § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution, the Immigration & Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. § 500, *et seq.*

7. The Court may grant declaratory and injunctive relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the Administrative Procedures Act, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651. This Court also has broad equitable powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

8. The federal habeas statute establishes the Court's power to decide the legality of Ms. Doe's detention and directs courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. Moreover, the Supreme Court has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). The common law gave courts power to release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190 U.S. 40, 63 (1903) ("[T]he Queen's Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail[.]'") (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

9. Upon habeas review, this Court has jurisdiction to review "constitutional claims or questions of law" in challenges to a bond proceeding before an immigration judge ("IJ") and the Board of Immigration Appeals ("BIA"). *Martinez v. Clark*, 124 F.4th 775, 781 (9th Cir. 2024) (citing *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011)). Questions of law include whether the IJ or BIA properly applied the burden of proof, and whether the agency fully reviewed the evidence of record. *Id.* at 785. This Court also has jurisdiction to review mixed questions of law and fact, including the determination of whether a noncitizen constitutes a danger or flight risk. *Id.* at 782-83.

VENUE

10. Venue is proper in this District because it is the district in which Ms. Doe is confined at the time of this petition's filing. *See Doe v. Garland*, 109 F.4th 1188, 1197-98 (9th Cir. 2024); *see also Ozturk v. Hyde*, 136 F.4th 382, 390 (2d Cir. 2025); *Khalil v. Joyce*, No. 25-cv-01963 (MEF) (MAH), 2025 U.S. Dist. LEXIS 63573, at *31 (D.N.J. Apr. 1, 2025), *aff'd*, *Khalil v. President of the United States*, No. 25-08019 (3d Cir., May 6, 2025). This District also has territorial jurisdiction over Respondent Christopher J. LaRose, the warden of Otay Mesa Detention Center, who is Ms. Doe's immediate custodian.

ORDER TO SHOW CAUSE PURSUANT TO 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents "forthwith," unless Ms. Doe is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

12. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

13. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted).

PARTIES

14. Petitioner Jane Doe ("Ms. Doe") is a 48-year-old Cambodian refugee who fled internment in a concentration camp as a toddler. She arrived in the United States when she was approximately 8 years old, became a lawful permanent resident in 1988, and has lived here for four decades. Ms. Doe appeared for an appointment with immigration authorities in September

2024, and was taken into custody without warning. She has been detained by Respondents in civil immigration detention at Otay Mesa Detention Center for more than eleven months.

15. Respondent Christopher J. LaRose is the Senior Warden at the Otay Mesa Detention Facility, and is an employee of CoreCivic, Inc. CoreCivic is a private company that operates for-profit detention centers, including Otay Mesa, to detain noncitizens facing civil immigration proceedings pursuant to a contract with Immigration and Customs Enforcement ("ICE"). Respondent LaRose is the immediate custodian of Ms. Doe. *See Doe*, 109 F.4th at 1196 (holding that the immediate custodian for habeas purposes is the warden of the contract detention center where an immigrant detainee is held). Respondent LaRose is named in his official capacity.

16. Gregory J. Archambeault is the Field Office Director for the San Diego Field Office of ICE Enforcement and Removal Operations ("ERO"). Respondent Archambeault maintains his office in San Diego, California, within this judicial district. The San Diego Field Office oversees custody determinations of noncitizens detained at Otay Mesa. Respondent Achambeault is the federal official most directly responsible for Ms. Doe's custody and is her legal custodian. He is named in his official capacity.

17. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of noncitizens. Respondent Lyons is a legal custodian of Ms. Doe. He is named in his official capacity.

18. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. She is responsible for overseeing DHS and its sub-agency, ICE, and has ultimate responsibility over the detention of noncitizens in civil immigration custody. *See* 8 U.S.C. § 1103(a). Respondent Noem is a legal custodian of Ms. Doe. She is named in her official capacity.

19. Respondent Pamela Bondi is the Attorney General of the United States and the head of the Department of Justice ("DOJ"), which encompasses the Board of Immigration Appeals ("BIA") and Immigration Judges ("IJs") as part of its sub-agency, the Executive Office

for Immigration Review ("EOIR"). As Attorney General, Respondent Bondi is responsible for overseeing the implementation and enforcement of the federal immigration laws. *See* 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the EOIR, which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Ms. Doe. She is sued in her official capacity.

STATEMENT OF FACTS

A. Ms. Doe is a Longtime Lawful Permanent Resident and Refugee from Cambodia Who has Lived in the United States for 40 Years

20. Ms. Doe is a 48-year-old woman who has lived in the United States for nearly 40 years, since 1985. Exh. 6, Tab H (Resp. Decl.), ¶ 1.

21. Ms. Doe and her family fled Cambodia when she was approximately two years old, after the Khmer Rouge interned the family in a concentration camp and enslaved Ms. Doe's mother. *Id.* They escaped to a refugee camp in Thailand, and were subsequently admitted to the United States as refugees in 1985, when Ms. Doe was approximately 8 years old. *Id.*; Exh. 1, Tab E (IJ Order, 1/13/11), at 7.

22. Ms. Doe and her family settled in Stockton, California. Exh. 6, Tab H (Resp. Decl.), ¶ 4. In 1988, Ms. Doe became a lawful permanent resident, retroactive to October 31, 1985. *Id.*; Exh. 6, Tab G (Memorandum of Creation of LPR Status). Ms. Doe's husband, mother, sisters, and children are all currently U.S. citizens. Exh. 6, Tab H (Resp. Decl.), ¶ 4.

B. As a Teenager and Young Adult, Ms. Doe Suffered Severe Domestic Violence. Her Ex-Partner Locked Her In the Closet, Raped Her, and Threatened to Burn Her Alive.

23. Ms. Doe's childhood was marked by trauma and abuse. Ms. Doe's father died in Cambodia when she was one year old. Exh. 6, Tab H (Resp. Decl.), ¶ 2. In the United States, her mother remarried a man named C., who was also a refugee. *Id.*, ¶ 3.

24. C. was verbally and emotionally abusive to Ms. Doe and her sister P. *Id.*, ¶ 6. He told them they were "dumb" and "losers" and that their biological father was dead and in hell. *Id.* One time, when Ms. Doe was about 10 years old, C. pointed a gun at her and her mother and threatened to kill them and himself. *Id.*, ¶ 7. Ms. Doe ran to a neighbor's house and called the

police, who arrested C.. *Id.*, ¶ 8. When he was released, he returned to their household and continued his emotional abuse. *Id.*

25. When she was about eighteen years old, Ms. Doe began a relationship with a man named C. S. C., who she called "S." *Id.*, ¶ 15. They began living together and eventually had four children together. *Id.* S. was physically and emotionally abusive to Ms. Doe. *Id.* He used methamphetamines regularly, including in front of the children. *Id.*, ¶ 16. He often left home for long periods of time, during which Ms. Doe struggled to care for the children. *Id.* When he did arrive home, he often flew into a rage. He punched holes in the wall, punched Ms. Doe, suffocated her, and beat her with a coat hanger. *Id.*, ¶ 17. He tied her up, put her in the closet, and left her in the dark for a long time. *Id.* He threatened to kill her. *Id.* On one occasion, S. threw Ms. Doe on the bed and put firewood on top of her, saying that he was going to burn her alive. *Id.*; *see also* Exh. 1, Tab E (IJ Order, 1/13/11), at 7.

26. S. raped Ms. Doe many times. Exh. 6, Tab H (Resp. Decl.), ¶ 19. For example, right after Ms. Doe came home from the hospital after having given birth to their first child, S. forced Ms. Doe to have sex with him, even though she was still recovering from childbirth. *Id.*; Exh. 1, Tab E (IJ Dec., 1/13/11), at 7.

27. Ms. Doe called the police to report S.'s abuse on several occasions. Exh. 6, Tab H (Resp. Decl.), ¶ 20. He was arrested at least three times, and restraining orders were placed against him. *See* Exh. 6, Tabs S, T, U (Complaints). However, when S. got out of jail he continued to abuse Ms. Doe, even breaking into the house by climbing in the balcony. Exh. 6, Tab H (Resp. Decl.), ¶ 20.

C. Ms. Doe Has Several Cognitive and Mental Health Conditions, Including Diagnosed Intellectual Disability

28. Ms. Doe "has trouble understanding things" and struggles with memory and cognition. *Id.*, ¶ 10-13. As a child, Ms. Doe struggled in school and was in special education classes. *Id.*, ¶ 9. She never finished high school. *Id.* She tried to get a drivers license but couldn't pass the written test because "all the answers looked the same to [her]." *Id.*, ¶ 13.

29. As an adult, Ms. Doe was diagnosed with an intellectual disability which impacts her ability to comprehend situations and legal proceedings. *See* Exh. 6, Tab I (Dr. Nelson Aff.), ¶ 9, 31. In 2007, Ms. Doe was found to have an IQ of 59 (the mean adult score is 100), which correlates to a diagnosis of "borderline intellectual functioning"[1] or "mild cognitive impairment." *Id.*, ¶ 9a. These technical terms mean that while she does not meet the formal diagnosis of "dementia," Ms. Doe nevertheless shows significant cognitive deficits when compared to others of her age. *Id.*, ¶ 31 n.1. As one evaluator explained, Ms. Doe is "very limited intellectually and emotionally." *Id.*, ¶ 9a. Because of Ms. Doe's intellectual disability, several doctors concluded she was unable to understand criminal and immigration proceedings. *Id.*, ¶ 32-35. In fact, during her criminal proceedings, Ms. Doe was found incompetent to stand trial and referred to a state hospital for more than five months. Exh. 6, Tab H (Resp. Decl.), ¶ 28.

30. Ms. Doe also developed other mental health conditions stemming from the extensive abuse she suffered as a child and adult, including major depression, mixed personality disorder, complex post-traumatic stress disorder ("PTSD"), and alcohol abuse disorder. Exh. 6, Tab I (Dr. Nelson Aff.), ¶ 10.

D. Trapped In an Abusive Relationship, Ms. Doe Struggled as a Young Parent and Admits She Did Not Adequately Care for Her Child

31. In the early 2000s, Ms. Doe was a young mother, trapped in an abusive relationship with S. and struggling with depression. *See* Exh. 6, Tab H (Resp. Decl.), ¶ 21-23. She "felt stuck, like [she] didn't have anywhere else to go." *Id.* She turned to alcohol to cope, and escape the pain and stress S. brought to her life. *Id.*, ¶ 24-25. Ms. Doe recalls that during this period she struggled to protect herself from S. and care for her kids, and "wasn't able to be a good mom." *Id.*, ¶ 27. In 2001, Ms. Doe was convicted of public intoxication after she was found drunk in the halls of her apartment building with her child. Exh. 1, Tab E (IJ Dec., 1/13/11), at 8. Later that year she was again found drinking in a park. *Id.*

[1] This diagnosis was previously referred to in the literature as "borderline mental retardation." Exh. X (Nelson Aff.), ¶ 32 n.2.

32. Around November 2006, Ms. Doe was arrested after she brought her son A. to the hospital with a serious head injury. *Id.* at 8-9; Exh. 6, Tab H (Resp. Decl.), ¶ 27. Who and what caused A.'s injury has never been conclusively determined. When Ms. Doe arrived at the hospital she also had visible injuries: both of her eyes were swollen and discolored, her face was bruised and she had noticeable swelling on the right side of her jaw. Exh. 1, Tab E (IJ Dec., 1/13/11), at 8-9. Ms. Doe's abusive partner S.—who was still subject to a 3-year protective order preventing him from contacting Ms. Doe because of his abuse, Exh. 6, Tab U—dropped Ms. Doe off at the hospital but did not come in as he "fear[ed] that someone would believe he was responsible for A.'s state." Exh. 1, Tab E (IJ Dec., 1/13/11), at 8-9.

33. S. later told authorities that the day before he took Ms. Doe and A. to the hospital he had "returned home" in the late evening to find the children—including older children—home alone and A. unable to wake up. *Id.* S. stated that when Ms. Doe returned in the middle of the night, he physically beat her, believing she was responsible for A.'s state. *Id.* He did not drive Ms. Doe and A. to the hospital until the next morning. *Id.* No one attested to having seen or witnessed Ms. Doe harming A.. *See id.* However, based on S.'s allegations and the older children's claims that they did not know what happened to A., prosecutors charged Ms. Doe with one count of child abuse under Cal. Penal Code § 273d(a), and one count of child endangerment under Cal. Penal Code § 273a(a). *Id.* Her parental rights were terminated. *Id.*

34. Ms. Doe was initially found incompetent to stand trial, and was committed to a California State Mental Hospital for several months. *Id.* at 9. After being given lessons about the criminal court process, she was returned to county jail. Exh. 6, Tab H (Resp. Decl.), ¶ 28-29.

35. Ms. Doe contested the charges for almost two years. *Id.*, ¶ 39. In September 2009, Ms. Doe's defense attorney encouraged her to take a deal in which she would plead guilty and be immediately released to a rehabilitative program. *Id.*, ¶ 30. Her attorney did not inform Ms. Doe that pleading guilty would have immigration consequences. *Id.* Ms. Doe took the deal and was ultimately sentenced to 300 days in jail. Exh. 1, Tab E (IJ Dec.), at 3.

36. Ms. Doe's 2009 plea was later vacated by the Superior Court of California, County of San Joaquin. A state judge found the plea "was not entered knowingly, voluntarily,

and intelligently," in violation of Ms. Doe's constitutional rights. Exh. 1, Tab C (Vacatur). Upon vacatur, the charging document was amended and Ms. Doe was convicted of Cal. Penal Code § 459, burglary, and a misdemeanor violation of § 273a(b), child endangerment, and sentenced to 350 days in custody, *nunc pro tunc* to September 2009. *Id.*

37. Ms. Doe has repeatedly attested under penalty of perjury that she did not intentionally hurt A.. Exh. 6, Tab H (Resp. Decl.), ¶ 27; Exh. 1, Tab E (IJ Dec., 1/13/11), at 9. Ms. Doe admits that because of S.'s abuse and her mental health conditions she was unable to properly care for A. and her other children, and that she didn't take A. to the hospital as soon as she should have. Exh. 6, Tab H (Resp. Decl.), ¶ 27. She has acknowledged that her "failure to properly care for [A.] led to [his] harm." *Id.* She "feel[s] the pain of what happened to him every day, even though it was nearly 20 years ago." *Id.*

38. A. is now an adult, as are Ms. Doe's other children. *See* Exh. 1, Tab E (IJ Dec. 1/13/11), at 7 (her youngest child was born in 2006).

E. Over the Next 15 Years, Ms. Doe Complied with the Law and Began a Relationship with Her U.S. Citizen Husband

39. Upon Ms. Doe's release from state custody in 2009, Immigration and Customs Enforcement ("ICE") detained her and initiated removal proceedings, charging her as removable based on her September 14, 2009 conviction. *See* Exh. 6, Tab H (Resp. Decl.), ¶ 30; Exh. 1, Tab E (IJ Dec., 1/13/11), at 1-2. As a result of her cognitive disability, Ms. Doe did not understand much of what happened in Immigration Court. Exh. 6, Tab H (Resp. Decl.), ¶ 30; *see also* Exh. 6, Tab I (Nelson Aff.), ¶ 34-35. The Immigration Judge ("IJ") never conducted a competency inquiry, even though Ms. Doe had previously been found incompetent in criminal proceedings. *See generally* Exh. 1, Tab E (IJ Dec., 1/13/11). In January 2011, the IJ found Ms. Doe removable under INA § 237(a)(2)(E)(i) based on her (now-vacated) § 273a(d) conviction, and denied her applications for cancellation of removal, asylum, and other protection. *Id.* at 5, 9. The IJ ordered Ms. Doe removed to Thailand and Cambodia in the alternative. *Id.* On May 31, 2011, the Board dismissed Ms. Doe's appeal. *See* Exh. 1, Tab F (BIA Dec., 5/31/11).

40. After her removal order became final, Ms. Doe was released from detention. Exh. 6, Tab H (Resp. Decl.), ¶ 32. She did not understand why, but it appears ICE was unable to effectuate her removal order. *Id.*

41. Upon her return to the community, Ms. Doe completed a 16-month rehabilitation program. *Id.*, ¶ 33. The program did not provide the resources Ms. Doe needed, as she had no counselor or case manager, and no support to address the trauma she had suffered. *Id.* Nevertheless, Ms. Doe stuck it out and completed the program. *Id.*

42. Ms. Doe then returned to her mother's home. *Id.*, ¶ 34. However, her stepfather continued to be verbally and emotionally abusive. *Id.* Around 2016, Ms. Doe felt she had to escape her stepfather, and she moved to a homeless shelter. *Id.*

43. Around 2019, Ms. Doe met J., a U.S. citizen. *Id.*, ¶ 37. They began a relationship and she began living with J. in his car. *Id.* J. has thyroid cancer, and Ms. Doe helped care and cook for him when he was losing weight. *Id.*, ¶ 39; Exh. 6, Tab L (J. Letter). Ms. Doe and J. have been married since June 2023. *Id.*, ¶ 38; Exh. 6, Tab M (Marriage Certificate).

F. After a Brief Relapse, Ms. Doe Began Therapy and Was Checking In Regularly with ICE When She Was Detained

44. In 2023, more than 16 years after her last offense, Ms. Doe had a brief relapse. Exh. 6, Tab H (Resp. Decl.), ¶ 40. With J. away, she was feeling depressed and lonely, and began drinking. *Id.* She got into a fight with somebody and was arrested and convicted of false imprisonment. *Id.* After this incident, Ms. Doe was "embarrassed and ashamed" and committed herself to getting help to stay sober. *Id.*

45. Starting in February 2024, Ms. Doe began meeting with a mental health counselor for weekly therapy sessions. *Id.* Ms. Doe met with her therapist every week for about eight months. *Id.*, ¶ 42. Their ongoing therapy was interrupted only when ICE detained Ms. Doe in November 2024. *Id.* Additionally, Ms. Doe began working with St. Mary's Day Center for support with finding a job and housing, and was making her appointments and doing well. *Id.* Ms. Doe has now been sober for more than 2 years. *Id.*

46. During this time, despite still being unhoused, Ms. Doe complied with ICE directives. She regularly appeared at check-ins with ICE every month. *Id.*, ¶ 55. In September 2024, ICE called her in for an appointment on a day that was not her "usual reporting day." *Id.*, ¶ 44. Ms. Doe complied and appeared at the appointment, at which time ICE took her into custody. *Id.*; *see also* Exh. 6, Tab P (I-213) ("Subject reported to Stockton ERO as scheduled…Upon reporting subject was taken into custody."). ICE transported her to Otay Mesa Detention Center, where she has been ever since. *Id.*

G. Upon Release, Ms. Doe Plans to Continue Mental Health Treatment that Was Cut Short by ICE Detention

47. Upon her release, Ms. Doe plans to continue mental health treatment and obtain services from several organizations that have pledged their support.

48. Ms. Doe has been accepted to a two-year substance abuse treatment program through Gospel Center Rescue Mission. *See* Exh. 6, Tab J (Gospel Center Letter). The first six months of the program are residential, and Gospel Center has confirmed a bed is available for Ms. Doe. *Id.* Programming throughout the two years includes individual counseling and group sessions, relapse prevention, AA meetings, anger management, and other rehabilitation classes. *Id.* Programming lasts for 10-12 hours each day. *Id.* The program works closely with San Joaquin County Health Department, where Ms. Doe was previously attending therapy before it was cut short by her ICE detention. *Id.*

49. Ms. Doe will also continue to receive assistance from St. Mary's Community Services, where she was regularly receiving services immediately prior to her detention by ICE. Exh. 6, Tab K (St. Mary's Letter). Ms. Doe began meeting with a caseworker at St. Mary's in April 2024, and she "made progress toward accessing the documents needed for long term [housing] placement." *Id.* She met with a case worker until August, just before she was detained by ICE. *Id.* Her husband, J., continues to be connected to services at St. Mary's. *Id.* St. Mary's will continue to support Ms. Doe in finding a placement in long-term housing. *Id.*

50. Additionally, J. continues to support Ms. Doe and will ensure she is able to attend her ICE appointments, as she did in the past. Exh. 6, Tab L (Letter from Ms. Doe's husband).

Ms. Doe and J. are also involved in A Greater Fellowship Church, and have the support of the pastor and community there. Exh. 6, Tab O (Pastor Letter).

H. Ms. Doe Is Continuing to Pursue Challenges to Her Removal Order

51. Ms. Doe continues to challenge her removal order. On December 23, 2024, Ms. Doe filed a motion to reopen her removal order with the BIA. *See* Exh. 1, Tab A (Weiss Decl.). ¶ 7; Exh. 6, Tab Q (BIA Receipt Notice). Ms. Doe sought reopening based on the vacatur for constitutional defect of the sole conviction underlying her removal order. *See id.* As a result of the vacatur of the conviction, Ms. Doe is no longer removable under any ground in the INA. In the alternative, Ms. Doe moved the BIA to reopen and/or reconsider for a competency determination under *Matter of M-A-M-*, and because she had suffered ineffective assistance of counsel from her prior attorney. Exh. 1, Tab A (Weiss Decl.), ¶ 7. Ms. Doe also sought reopening on the basis of changed country conditions in Cambodia. *Id.*

52. On April 3, 2025, Ms. Doe filed a mandamus petition and complaint in this Court, seeking an order requiring the BIA to rule on her motion to reopen promptly and before her removal from the United States. *See Doe v. Bondi*, Case No. 3:25-cv-00805-BJC-JLB (S.D. Cal., filed Apr. 7, 2025), ECF 1.

53. While Ms. Doe's mandamus petition and complaint was pending, on April 17, 2025, the BIA granted her motion for a stay of removal. *See id.*, ECF 8. However, DHS moved the BIA to reconsider its April 17 order granting a stay of removal, and on May 14, 2025, the BIA granted DHS's motion and vacated the stay. *Id.*, ECF 26-4. At first, ICE represented to this Court that it would not remove Ms. Doe pending adjudication of her motion to reopen. *Id.*, ECF 26-1, ¶ 27. However, on June 4, 2025, ICE "changed its posture" and decided to proceed with Ms. Doe's removal. *Id.*, ECF 25.

54. On June 6, 2025, Ms. Doe filed a motion for a temporary restraining order ("TRO") and injunction to prevent her removal in this Court. *Id.*, ECF 26. On June 11, 2025, the Court issued a limited injunction to preserve the status quo while it evaluated its own jurisdiction. *Id.*, ECF 31. The Court later denied a TRO but issued an administrative stay to

prevent Ms. Doe's removal while it considered its jurisdiction over her mandamus petition and complaint. *Id.*, ECF 43.

55. On July 23, 2025, after Ms. Doe's motion to reopen had been pending seven months, the BIA denied the motion. *Id.*, ECF 46. Ms. Doe filed a petition for review of that decision with the U.S. Court of Appeals for the Ninth Circuit, and sought a judicial stay of removal. *See* Declaration of Peter Weiss in Support of Petition for Writ of Habeas Corpus ("Weiss Habeas Decl."), ¶¶ 21-22. Pursuant to the Ninth Circuit's rules, a stay of removal remains in place while the case goes forward. Ninth Cir. Gen. Order 6.4.

PROCEDURAL HISTORY OF CUSTODY PROCEEDINGS

56. On March 11, 2025, after Ms. Doe had been detained by ICE for more than six months, IJ Ana Partida conducted a custody redetermination hearing. Exh. 10 (IJ Bond Memo), at 1. The IJ found that Ms. Doe was detained under 8 U.S.C. § 1231(a)(6), and entitled to a bond hearing under the district court injunction in *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. June 5, 2018). *Id.* At an *Aleman* hearing, DHS bears the burden to justify detention by clear and convincing evidence that Respondent is a danger or flight risk. IJ Bond Memo, 03/19/25, at 1; *Aleman Gonzalez*, 325 F.R.D. 616; Exh. 6, Tab V (*Aleman* Order).

57. Prior to the custody hearing, DHS submitted only two documents into evidence: (1) a Ninth Circuit docket report; and (2) the BIA decision dismissing Ms. Doe's appeal in May 2011. Exh. 7 (DHS Evidence). DHS submitted no criminal court documents, arrest reports, or any other evidence. *See* Weiss Habeas Decl., ¶ 10. At the hearing, the IJ gave DHS the opportunity to examine Ms. Doe. *See* Exh. 8 (Transcript), at 5. DHS declined to do so. *Id.* DHS did not put on any other witness, and instead opted to go straight to arguments on bond. *Id.*

58. The IJ denied bond. The IJ stated that Ms. Doe was a danger because she "caused permanent damage to a child," without citing any evidence. *Id.* at 10. The IJ relied on the fact that Ms. Doe supposedly "did not seek treatment" prior to being detained by ICE, so there were "concerns" about her "sincerity" in entering treatment now. *Id.* The IJ also found Ms. Doe a flight risk despite her history of compliance with ICE reporting, claiming erroneously that this compliance was "prior to her removal order being final." *Id.*

59. DHS waived appeal. *Id.* On March 13, 2025, Ms. Doe filed a timely appeal with the Board. *See* Exh. 9 (Notice of Appeal).

60. The IJ subsequently issued a bond memorandum explaining her reasons for denying bond. *See* Exh. 10 (IJ Bond Memo, dated 03/19/25). The IJ recounted the bond factors from *Matter of Guerra*, 24 I&N Dec. 37, 40-41 (BIA 2006). She then stated that her determination in bond proceedings was focused on "whether [Ms. Doe] engaged in conduct that presented *or could present* a danger to the community." *Id.* at 3 (emphasis added). To assess Ms. Doe's conduct, IJ Partida cited solely to a prior IJ's 2011 decision in Ms. Doe's removal proceedings, without acknowledging that DHS had not submitted any of the underlying evidence into the bond record. *Id.* at 3-4. The IJ mentioned Ms. Doe's efforts at rehabilitation but incorrectly stated that [Ms. Doe] "never completed" a rehabilitation program and that her 2023 relapse had "eroded th[e] strides" she made to seek housing, ignoring that Ms. Doe had been successfully meeting with a therapist and St. Mary's Community Services *after* her relapse and those efforts were only interrupted by ICE's decision to detain her. *Id.* at 5; *compare* Exh. 6, Tab H (Resp. Decl.), ¶ 42. The IJ stated that Ms. Doe was a flight risk because of her mental health conditions and homelessness—despite Ms. Doe's record of compliance with ICE check-ins—and a danger because of her past convictions. Exh. 10 (IJ Bond Memo), at 5.

61. On May 6, 2025, Ms. Doe filed a brief to the BIA challenging the IJ's bond decision. Exh. 11 (Appeal Brief). Ms. Doe argued, *inter alia*, that: (1) the IJ improperly failed to place the burden on the DHS; (2) The IJ applied the wrong bond standard by failing to consider *current* dangerousness; (3) the IJ failed to consider all the evidence in the record, and both her dangerousness and flight risk determinations clearly overlooked and misunderstood record evidence; (4) the IJ's reliance on Ms. Doe's housing and mental health conditions to deny bond violated anti-discrimination law and due process; and (5) the IJ failed to consider whether any amount of bond or conditions would mitigate flight risk. *Id.*

62. On July 23, 2025, the BIA dismissed Ms. Doe's bond appeal. *See* Exh. 12 (BIA Order, dated 07/23/2025). In an eight-sentence opinion, the BIA "adopt[ed] and affirm[ed]" the determinations of the IJ. *See id.* The BIA did not address most of Ms. Doe's arguments on

appeal. *See id.* The BIA stated that the IJ proper found DHS had established that Ms. Doe was a danger to the community due to her criminal history, and a flight risk due to her "lack of housing and mental health and substance abuse issues." *See id.*

63. Ms. Doe now files this habeas petition challenging her detention and the IJ and BIA decisions denying her bond.

LEGAL FRAMEWORK

I. Detention Authority and Bond Hearings

64. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Thus, immigration detention—which is civil, not criminal, in nature—is constitutionally permissible only to the extent that it is reasonably related to the purpose of preventing danger to the community or flight risk. *Id.*; *see also Demore v. Kim*, 538 U.S. 510, 515 (2003).

65. Within these constraints, Congress created a statutory scheme that authorizes immigration detention in certain circumstances. 8 U.S.C. § 1226(a) authorizes the DHS to detain a noncitizen "pending a decision on whether [she] is to be removed from the United States. 8 U.S.C. § 1226(a). A noncitizen detained under § 1226 and not subject to certain criminal and other categories of inadmissibility or deportability is entitled to a bond hearing before an immigration judge. *See* 8 C.F.R. § 1236.1(d)(1); *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018).

66. 8 U.S.C. § 1231(a), by contrast, governs detention after a final order of removal has been issued. During a 90-day removal period, DHS "shall detain" the noncitizen. 8 U.S.C. § 1231(a)(2). After the 90-day removal period, DHS may release the noncitizen, or may continue detention in certain circumstances. 8 U.S.C. § 1231(a)(6).[2] Section 1231(a)(6) encompasses noncitizens who are collaterally challenging a removal order, including through a motion to reopen. *Diouf v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011); *see generally* 8 U.S.C. §

[2] Although this subsection uses "Attorney General," this determination is made by DHS. *See* 8 C.F.R. § 241.4.

1229(c)(7) (discussing motions to reopen removal proceedings).

67. An injunction entered by a district judge in the Northern District of California requires that the government provide bond hearings for individuals detained under 8 U.S.C. § 1231(a)(6) for more than six months within the Ninth Circuit. *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. June 5, 2018), *rev'd and remanded sub nom. Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022). The injunction applies to anyone detained under § 1231(a)(6) with a live claim (such as a motion to reopen) before either the Immigration Court, the Board of Immigration Appeals ("BIA") or a circuit court of appeals. Exh. 6, Tab V (*Aleman* Clarification Order). Although the Supreme Court subsequently remanded the case, the injunction requiring such bond hearings ("*Aleman* hearings") currently remains in place. *See* 596 U.S. at 556; *Aleman Gonzalez v. Whitaker, et. al.*, No. 3:18-cv-01869-JSC (N.D. Cal.), ECF 138 (Order Setting Case Management Conference) (August 13, 2025).

II. Bond Hearing Standard

68. At an *Aleman* hearing, DHS bears the burden of proof to show by clear and convincing evidence that the individual is a danger or flight risk to justify further detention. *Aleman Gonzalez*, 325 F.R.D. at 628. The clear and convincing burden is required by the Due Process Clause. *See Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011) (requiring the government to bear the burden of proof by clear and convincing evidence in prolonged detention immigration bond hearings) ("Because it is improper to ask the individual to 'share equally with society the risk of error when the possible injury to the individual'—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection) (quoting *Addington v. Texas*, 441 U.S. 418, 427 (1979)).

69. Clear and convincing evidence is a higher evidentiary standard than "preponderance of the evidence," and requires "an abiding conviction that" the party's contention is "highly probable." *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984).

70. In applying the clear and convincing standard in the immigration bond context, courts have analogized to the similar standard for pretrial bail hearings under the Bail Reform Act. *See Obregon v. Sessions*, No. 17-cv-01463-WHO, 2017 U.S. Dist. LEXIS 60552, at *19

(N.D. Cal. Apr. 20, 2017) ("Decades of precedent in the context of criminal bail hearings [under the Bail Reform Act] offer IJ's the appropriate guidance in assessing whether the government has met its burden of proving dangerousness by 'clear and convincing evidence.'"); *see also Salazar-Leyva v. Sessions*, No. 17-cv-04213-EMC, 2017 U.S. Dist. LEXIS 119064, at *7 (N.D. Cal. July 28, 2017) (analogizing immigration bond hearings to Bail Reform Act hearings); *Jennings*, 583 U.S. at 334 (Breyer, J., dissenting) (same).

71. Additionally, the Board of Immigration Appeals has outlined several factors for immigration judges to consider in determining whether a noncitizen poses a danger or flight risk. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). These factors include: (1) whether the individual has a fixed address in the United States; (2) length of residence in the United States; (3) family ties in the United States; (4) employment history; (5) record of appearance in court; (6) criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) history of immigration violations; (8) any attempts to flee prosecution or otherwise escape from authorities; and (9) manner of entry to the United States. *Id.*

72. Further, to comport with the Due Process Clause, civil detention must not be punitive. *United States v. Salerno*, 481 U.S. 739, 747 (1987). Civil detention that has a non-punitive purpose may nevertheless be unconstitutionally punitive if it is "'excessive in relation to [its non-punitive] purpose,' or is 'employed to achieve objectives that could be accomplished in so many alternative and less harsh methods.'" *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004) (internal citations omitted); *see also Salerno*, 481 U.S. at 747 (determining whether a restriction on liberty is punitive requires considering "whether it appears excessive in relation to the [non-punitive] purpose" (quoting *Schall v. Martin*, 467 U.S. 253, 269 (1984)). In other words, if the permitted purpose of immigration detention—protecting against risk of flight or danger—could be achieved without physical custody, it may be punitive, in violation of the Due Process Clause. *See Jones*, 393 F.3d at 934. Thus, the availability of alternatives to incarceration is a relevant consideration in whether the further detention is permissible.

III. Judicial Review of Bond Determination

73. Although the statute precludes judicial review of the Attorney General's "discretionary" judgment regarding bond determinations made under 8 U.S.C. § 1226, *see* 8 U.S.C. § 1226(e),[3] the Ninth Circuit has held that this provision "does not limit habeas jurisdiction over constitutional claims or questions of law" that arise in immigration bond proceedings. *Singh*, 638 F.3d at 1202.

74. Habeas courts in this District and elsewhere have long reviewed IJ bond decisions, and have vacated those decisions and ordered a petitioner's release when the evidence did not establish danger or flight risk. *See, e.g.*, *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008) (holding that evidence before the IJ failed as a matter of law to prove flight risk or danger, and ordering petitioner released); *Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1119 (S.D. Cal. 2008) (same); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 243-44 (W.D.N.Y. 2019) (same). *L.G.M. v. Larocco*, No. 25-cv-2631 (PKC), 2025 U.S. Dist. LEXIS 147451 (July 31, 2025), at *25-26 (same).

75. Questions of law reviewable on habeas include whether the IJ or BIA properly applied the appropriate standard of proof. *See Singh*, 638 F.3d at 1203. A habeas court also has jurisdiction to consider whether the IJ or BIA violated the noncitizen's due process rights or a federal statute during the bond hearing, including whether the IJ or BIA properly considered all the evidence. *See Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024); *see also Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000) (failure to review all relevant evidence is due process violation).

76. A habeas court may also review mixed questions of law and fact, including whether the facts in the record meet a legal standard. *Martinez*, 124 F.4th at 782. In *Martinez*, the Ninth Circuit recently held that the determination of whether a noncitizen is "dangerous" in a prolonged detention hearing is a mixed question of law and fact reviewable by a district court on

[3] As Ms. Doe is detained under 8 U.S.C. § 1231(a)(6), she contends that the jurisidiction-stripping provision in § 1226(e), which applies only to discretionary determinations made "pursuant to [that] section [1226]," does not apply. In any event, as explained below the Ninth Circuit case law is clear that § 1226(e) does not preclude review of legal questions, nor the ultimate determination whether the facts show flight risk or danger.

habeas. *Id.* at 779-80. The court reasoned that the multi-factor *Guerra* test provided a standard by which the IJ made a dangerousness determination, and therefore whether the IJ properly found a noncitizen dangerous is a mixed-question of law and fact which a district court can review. *Id.* at 783-84 (following *Wilkinson v. Garland*, 601 U.S. 209 (2024)). The same reasoning applies to the flight-risk determination. *See id.* at 784 (a mixed question is reviewable "so long as federal courts can assess whether an IJ correctly applied the statutory standard to a given set of facts").

77. A habeas court reviews de novo legal and constitutional questions in bond proceedings. *See Singh*, 638 F.3d at 1203 ("We review de novo due process claims and questions of law raised in immigration proceedings.").

78. A habeas court reviews mixed questions of law and fact—including the IJ's dangerousness and flight risk determinations—for abuse of discretion. *Martinez*, 124 F.4th at 780.

79. The IJ or BIA 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) (internal citations and quotation marks omitted). Failing to apply the correct legal standard is an abuse of discretion. *Id.* at 1254. Ignoring important aspects of a respondent's claim is also an abuse of discretion. *Watkins v. INS*, 63 F.3d 844, 848-849 (9th Cir. 1995) ("When the BIA distorts or disregards important aspects of the alien's claim, denial of relief is arbitrary, and the BIA is considered to have abused its discretion."). Summarily dismissing a respondent's claims without engaging in substantive analysis or articulating reasons is also an abuse of discretion. *Tadevoysan*, 743 F.3d at 1258 ("Due process and this court's precedent require a minimum degree of clarity in dispositive reasoning and in the treatment of a properly raised argument.").

80. When the BIA adopts and affirms the IJ's decision, citing to *Matter of Burbano*, 20 I&N Dec. 872 (BIA 1994), federal courts review the IJ's decision as the articulation of the agency's position. *See, e.g.*, *Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008); *Aguilar-Ramos v. Holder*, 594 F.3d 701, 704 (9th Cir. 2010).

ARGUMENT

81. This Court should review the IJ and BIA's decisions in Ms. Doe's bond proceedings, and should find that the agency violated due process and the statute in assessing Ms. Doe's request for custody determination. Further, the IJ's decision denying bond based on dangerousness and flight risk misapplies the law and is arbitrary, irrational, and an abuse of discretion. Because Ms. Doe has been in detention for more than 11 months without the government ever properly establishing that she is a flight risk or danger to the community, this Court should order her released. Alternatively, the Court should order Respondents to provide Ms. Doe a proper bond hearing that complies with due process and the statute, holds DHS to its burden of proof, and fairly considers the appropriate evidence.

I. THE IJ AND BIA FAILED TO APPLY THE CORRECT BURDEN OF PROOF

82. Both the *Aleman* injunction and due process require that at a bond hearing like the one provided Ms. Doe, DHS must bear the burden of showing danger or flight risk by clear and convincing evidence. *See Aleman*, 325 F.R.D. at 619; *Singh*, 638 F.3d at 1200.

83. Whether the IJ applied the proper burden of proof in bond proceedings is reviewable on habeas. *See Singh*, 638 F.3d at 1203. In considering whether the IJ and BIA properly applied the burden of proof, "the IJ's recitation of the correct legal standard is not dispositive." *R.R.M.C. v. Decker*, No. 22 Civ. 2952 (LGS), 2022 U.S. Dist. LEXIS 179302, at *11 (S.D.N.Y. Sept. 30, 2022) (holding IJ did not properly place burden on DHS in bond hearing); *see also Hernandez v. Garland*, 66 F.4th 94, 102 (2d Cir. 2023) ("Of course, the BIA must not only state the correct standard, but apply it.").

84. "Establishing dangerousness [or flight risk] by clear and convincing evidence is a high burden and must be demonstrated in fact, not 'in theory.'" *Obregon v. Sessions*, No. 17-cv-01463-WHO, 2017 U.S. Dist. LEXIS 60552 (N.D. Cal. Apr. 20, 2017), at *7 (citing *United States v. Patriarca*, 948 F.2d 789, 792 (1st. Cir. 1991)). "[I]f the clear and convincing standard means what it says, it cannot permit detention based on mere speculation that [a noncitizen's] release might *possibly* pose a danger." *Hechavarria*, 358 F. Supp. 3d at 241.

85. In Ms. Doe's case, although the IJ stated the correct burden of proof, she did not actually place the burden of proof on DHS. *See* Exh. 10 (IJ Bond Memo), at 2. Instead, her statements reveal that she began from a presumption *against* release, rather than the other way around.

86. For example, regarding flight risk, the IJ stated that she was "not convinced that the applicant will attend future hearings." Exh. 10 (IJ Bond Memo), at 5; *see also* Exh. 8 (Transcript), at 10 ("[I]t does not appear to the court that there is a significant reason why the respondent would continue to appear"). But that had it exactly backwards: it was DHS's burden to convince the IJ that Ms. Doe *would not* appear, not Ms. Doe's burden to show she would. *See Hechavarria*, 358 F. Supp. 3d at 241 ("When the Government bears the burden of proof by clear and convincing evidence, the IJ must be convinced in the opposite direction: i.e., convinced that Petitioner *would not* report to authorities") (emphasis in original).[4] Similarly, regarding dangerousness the IJ stated she was unconvinced by Ms. Doe's release plan because she had "concerns" about Ms. Doe's commitment to treatment. Exh. 8 (Transcript), at 10.[5] But applying the clear and convincing standard does not allow the IJ to speculate or deny bond on vague "concerns"; rather, to deny bond she would have had to find it is "highly probable" the treatment plan will be ineffectual. *See Colorado*, 467 U.S. at 316. The IJ made no such finding.

87. The IJ's treatment of the evidence also shows she did not place the burden of proof on the government. "[T]he legal concept of a 'burden of proof' requires that the party upon whom the burden rests carry such burden by presenting evidence." *Matter of Guevara*, 20 I&N Dec. 238, 244 (BIA 1990). Here, DHS submitted only two documents: (1) a Ninth Circuit docket printout; and (2) a BIA order from 2011. Exh. 7. These documents had little relevance to the

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[4] In any case, the IJ entirely ignored that Ms. Doe's is pursuing a motion to reopen and terminate her removal proceedings, so she clearly has a strong incentive to appear and continue to seek relief from her removal order. *See* Section III, point 1, *infra*. And the IJ also improperly minimized Ms. Doe's past record of compliance with ICE check-ins.

[5] These "concerns" were based on the IJ's incorrect statement that Ms. Doe "did not seek treatment while she was not detained," Exh. 8 (Transcript), at 10. In fact, Ms. Doe *was* attending regular treatment immediately prior to her arrest by ICE. *See* Point B.3, *infra*.

determination of whether Ms. Doe is currently a flight risk or danger, and the IJ did not cite either of them in her decision. *See id.* Further, DHS declined to conduct any questioning of Ms. Doe. *See* Exh. 8 (Transcript), at 5. It is hard to imagine how, without presenting relevant evidence or questioning Ms. Doe, DHS could have met its burden of proof. *Cf. Vitug v. Holder*, 723 F.3d 1056, 1066 (9th Cir. 2013) (holding that when the burden of proof is on DHS, it must present some "individualized evidence").

88. Because DHS did not submit any evidence, IJ Partida instead relied almost exclusively on another IJ's decision in Ms. Doe's removal proceedings in 2011. *See* Exh. 10 (IJ Bond Memo) (citing the 2011 IJ decision more than 16 times). But the law is clear that the record of immigration bond proceedings is entirely separate from the record in removal ("merits") proceedings. "In any bond case in which the parties or the Immigration Judge rely on evidence from the merits case, it is necessary that such evidence be introduced or otherwise reflected in the bond record." *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999) (en banc). Here, DHS did not submit any of the underlying evidence from the merits case. IJ Partida's reliance on the prior IJ's summary of the facts in the merits case essentially improperly combined the record between the merits and bond cases, and excused DHS from meeting its burden to submit any evidence it wanted considered *into the bond record*.

89. Further, IJ Partida's heavy reliance on the 2011 IJ decision in her bond decision exacerbated the burden-of-proof problem by adopting factual findings made by an IJ when the burden was on *Ms. Doe*. In the 2011 merits proceedings, Ms. Doe bore the burden of proof to establish eligibility for relief from removal. *See* Exh. 1, Tab E, at 5; 8 U.S.C. § 1229a(c)(4). By contrast, in these bond proceedings, DHS was supposed to bear the burden. This difference required careful, new factfinding. *Cf.* Restatement 2d of Judgments § 28(4) (issue preclusion does not apply—and facts must be considered anew—where an issue was decided in one proceeding, but in subsequent proceeding the "burden has shifted to [the] adversary").[6] By using

[6] Additionally, Ms. Doe presented evidence in bond proceedings that her intellectual disability affected her ability to participate in her 2011 removal proceedings, casting significant doubt on the findings made by the IJ in that case. *See* Exh. 6, Tab I (Dr. Nelson Aff.), ¶ 34-36. The 2011 IJ never considered Ms. Doe's competency to proceed in immigration proceedings, in violation of due process and BIA case law. *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).

the 2011 merits decision to make a bond determination without considering any of the underlying evidence, the IJ effectively flipped the burden onto Ms. Doe in violation of the *Aleman* injunction and due process.

90. Further, although Ms. Doe raised the burden of proof problems in her brief to the BIA, the BIA entirely failed to address them, in violation of due process. *See* Exh. 11 (Appeal Brief); Exh. 12 (BIA Decision); *Granados v. Garland*, 992 F.3d 755, 764 (9th Cir. 2021) ("IJs and the BIA are not free to ignore arguments raised by a party") (internal quotation marks omitted).

II. THE IJ AND BIA'S DENIAL OF BOND BASED ON DANGEROUSNESS WAS LEGALLY ERRONEOUS, ARBITRARY, AND AN ABUSE OF DISCRETION

91. In addition to applying the improper burden of proof, the IJ and BIA also erred in finding that Ms. Doe poses a danger to the community. In reaching this conclusion, the IJ applied the wrong legal standard and ignored or misstated significant evidence in the record, constituting an abuse of discretion. *See Tadevosyan*, 743 F.3d at 1254 (failure to apply correct legal standard is an abuse of discretion); *Watkins,* 63 F.3d at 848-849 (distorting or disregarding important aspects of the claim is an abuse of discretion). This Court should reverse and find that DHS did not meet its burden to show that Ms. Doe poses a current danger to the community by clear and convincing evidence. *See, e.g.*, *Hechavarria*, 358 F. Supp. 3d at 243-44; *see also Judulang*, 562 F. Supp. 2d at 1127.

1. The IJ Did Not Assess *Current* Dangerousness

92. First, the IJ applied the wrong dangerousness standard by failing to consider whether Ms. Doe poses a *current* danger to the community. *See Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1998) ("The process due…requires an opportunity for an evaluation of the individual's *current* threat to the community and his risk of flight.") (emphasis added). Immigration detention is non-punitive; thus, an IJ at a bond hearing must "ensure that the government's purported interest in…protecting the community from danger is *actually* served by detention *in this* case." *Singh*, 638 F.3d at 1206 (internal quotation marks omitted) (emphasis in original). A past

conviction *may* have relevance to current dangerousness, but it is not determinative if the conviction was long ago or circumstances have changed. *Id.*; *Ngo*, 192 F.3d at 398; *see also Matter of Guerra*, 24 I&N Dec. 37, 40 (2006) (requiring consideration of criminal history to include "recency" of offenses).

93. Here, the IJ improperly focused solely on *past* conduct, without considering current circumstances. The IJ stated that "the Court's focus" is "whether [Ms. Doe] engaged in conduct that presented *or* could present a danger to the community." Exh. 10 (IJ Bond Memo), at 3. By using this construction, the IJ wrongly suggested DHS could meet its burden solely by showing that in the past Ms. Doe "engaged in" conduct that "presented" a danger, without ever establishing a *current* danger. Additionally, the IJ specifically stated that the allegation Ms. Doe "caused permanent damage to a child" in 2006 was "in and of itself sufficient for the Court to find" that DHS met its burden on danger. Exh. 8 (Transcript), at 10. Meanwhile, the IJ did not consider whether an alleged offense from nearly 20 years ago—that occurred in the context of Ms. Doe's struggle to raise her children under the shadow of extreme domestic violence—is relevant to the question of whether she poses a *current* danger, given that her children are all adults.[7]

94. Indeed, the IJ did not address the "recency of the offense" at all, ignoring the *Matter of Guerra* factor that requires assessment of the recency of any convictions. *See Guerra*, 24 I&N Dec. at 40; *Singh*, 638 F.3d at 1206. Additionally, by focusing on past conduct, the IJ did not assess whether Ms. Doe's detention is currently justified and instead appeared to impose

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[7] In fact, there was no actual evidence in the record that Ms. Doe intentionally caused harm to her child in 2006. The IJ cited the 2011 IJ decision, but that decision notes that the charges against Ms. Doe were based on allegations by her abusive partner S.—who admitted to beating Ms. Doe before bringing Ms. Doe and her child to the hospital. Exh. 1, Tab E (IJ Dec., 1/13/11), at 8-9. And S. did not claim that he witnessed Ms. Doe causing harm to her child, but only that he assumed she had been responsible, even though older children were also in the home. *Id.* Ms. Doe has acknowledged that she was struggling as a mother and failed to take her son to the doctor in time. Yet she affirmed under oath that she did not intentionally harm A. *Id.* The IJ did not cite any reason to consider Ms. Doe's sworn testimony not credible, and despite having the opportunity, DHS declined to conduct any examination of Ms. Doe. The evidence is insufficient to meet DHS's burden on dangerousness and does not constitute "probative and specific" evidence sufficient to support the IJ's suggestion that Ms. Doe intentionally caused her child's injuries. *See Matter of Guerra*, 24 I&N Dec. at 40-41.

detention as punishment for past acts, in violation of due process. *See, e.g.*, *Jones*, 393 F.3d at 934. The IJ's analysis of dangerousness failed to apply the proper standard, was contrary to law and constitutes an abuse of discretion. *See Tadevosyan*, 743 F.3d at 1254.

2. The IJ Failed to Consider All the Evidence

95. Additionally, the IJ failed to consider all the evidence in the record which showed that Ms. Doe *does not* pose a current danger. That violated Ms. Doe's right to due process and is an abuse of discretion this Court must correct. *See, e.g.*, *Cole v. Holder*, 659 F.3d 762, 772 (9th Cir. 2011) ("[W]here there is any indication that the BIA did not consider all of the evidence before it...the decision cannot stand. Such indications include misstating the record and failing to mention highly probative or potentially dispositive evidence."); *Xiao Fei Zheng v. Holder*, 644 F.3d 829, 833 (9th Cir. 2011) ("[T]he BIA abuses its discretion when it fails to consider all favorable and unfavorable factors bearing on a petitioner's application..."); *Rashtabadi v. I.N.S.*, 23 F.3d 1562, 1571 (9th Cir. 1994) ("The failure to consider an important factor or to make a record of considering it constitutes an abuse of discretion.").

96. *First*, the IJ failed to discuss Ms. Doe's change in circumstances since her 2006 offense. Even assuming, *arguendo*, that this offense could show a present danger to the community, the evidence showed that circumstances had changed in numerous ways. In the early 2000s, Ms. Doe was trapped in a violent, abusive relationship and struggling with mental health conditions. Exh. 6, Tab H (Resp. Decl.), ¶ 15-25, 27; Exh. 6, Tab I (Dr. Nelson Aff.), ¶ 29-31, 39. She was unable to be a caring, present mother. Exh. 6, Tab H (Resp. Decl.), ¶ 27. Today, Ms. Doe's children are grown adults. *See* Exh. 1, Tab E (IJ Dec. 1/13/11), at 7. She is not caring for them or any other children. There is thus no evidence that the same kind of harm is likely to occur again. *See, e.g., Judulang*, 562 F. Supp. 2d at 1127 (holding that IJ erred by denying bond based on violent conviction that was nearly 20 years old, without considering present circumstances).

97. *Second*, the IJ failed to consider the evidence of Ms. Doe's recent, successful rehabilitation efforts. *See, e.g., Obregon*, 2017 U.S. Dist. LEXIS 60552, at *23 (faulting IJ for failing to address evidence of rehabilitation and successful treatment in denying bond). After her

brief relapse in 2023, Ms. Doe sought out the help she needed. Beginning in February 2024, while in the community, Ms. Doe was in ongoing psychotherapy for her substance abuse disorder. Exh. 6, Tab H (Resp. Decl.), ¶ 42. She met with a mental health counselor weekly for about eight months, and as a result has been sober for more than two years. *Id.* The sessions were interrupted only by Ms. Doe's detention by ICE in September 2024. *Id.*

98. The IJ did not mention this therapy at all. Instead, the IJ wrongly suggested that Ms. Doe had done nothing to address her alcohol use disorder until her ICE detention. Exh. 10 (IJ Bond Memo), at 5 (Ms. Doe is "only now claim[ing] that she will seek rehabilitative assistance…as a result of her legal proceedings in immigration court and current detention"). The IJ seemed to be under the mistaken impression that Ms. Doe was detained by ICE immediately after the 2023 incident, when in fact Ms. Doe was successfully living in the community for months prior to her detention. Exh. 6, Tab H (Resp. Decl.), ¶ 42; *see Watkins,* 63 F.3d at 848-849 ("When the BIA distorts or disregards important aspects of the alien's claim, denial of relief is arbitrary, and the BIA is considered to have abused its discretion.").

99. Ms. Doe's efforts while in the community immediately *before* her detention—unconnected to any immigration or other legal requirements—show that she *is* sincere in her efforts at obtaining treatment and remaining sober.[8] Indeed, it was only ICE's decision to re-detain her at a scheduled check-in she dutifully attended that interrupted her efforts. The IJ wrongly ignored this evidence. *See Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1035 (N.D. Cal. 2018) ("To now allow DHS to detain [an individual] because its own agents prevented her from finishing her [rehabilitation efforts] has no justification in the record or common sense"), *vacated on other grounds*, 2024 U.S. App. LEXIS 5043.

100. Similarly, the IJ did not significantly discuss or address Ms. Doe's release plan, which includes a residential program where she will have individual counseling and group sessions, relapse prevention classes, AA meetings, anger management, and other rehabilitation

[8] In any case, the IJ could not have properly found that DHS established the insincerity of Ms. Doe's commitment to treatment by clear and convincing evidence when DHS declined the opportunity to pose even a single question to Ms. Doe about her plans. *See* DAR, 3/11/25 at 7:00; Point A, *supra*.

classes. Exh. 6, Tab J (Gospel Center Letter). To be sure, Ms. Doe's recovery from her past trauma and alcohol use disorder is a long-term journey, but proper treatment and support mitigates the risk of relapse. *See, e.g.*, *Obregon*, 2017 U.S. Dist. LEXIS 60552, at *23-25 (noting that any individual with previous substance abuse "will continue to struggle with [recovery], to varying degrees, throughout her life" but that a "viable plan for rehabilitation" undermines any dangerousness finding). In particular, the IJ ignored that the program works closely with San Joaquin County Health Department, where Ms. Doe was previously attending therapy before her detention by ICE. Exh. 6, Tab J (Gospel Center Letter). Ms. Doe will also have the support of St. Mary's Center, where she was successfully working with a case worker before her detention by ICE. Exh. 6, Tab K (St. Mary's Letter). This kind of comprehensive treatment will ensure that Ms. Doe has space to heal from her past trauma, and that she continues to remain sober and law-abiding. *See* Exh. 6, Tab I (Dr. Nelson Aff.), ¶ 45.

101. In short, in light of Ms. Doe's demonstrated successful rehabilitation in the past and her comprehensive release plan—which were ignored and/or arbitrarily disregarded by the IJ and BIA—DHS did not establish that she poses a danger to the community by clear and convincing evidence. Rather, a proper application of the standard shows that Ms. Doe does not pose a current danger and is likely to successfully return to the community and her rehabilitation efforts while her immigration proceedings are ongoing. The IJ and BIA's contrary decisions are arbitrary, contrary to law, and an abuse of discretion.

III. THE IJ AND BIA'S DENIAL OF BOND BASED ON FLIGHT RISK WAS ARBITRARY, IRRATIONAL, AND AN ABUSE OF DISCRETION

102. The IJ and BIA's alternative determination that DHS met its burden on flight risk suffers from similar deficiencies as those discussed above. The IJ irrationally dismissed Ms. Doe's prior compliance with ICE check-ins, erroneously failed to consider evidence and key factors, and blamed Ms. Doe for her mental illness in violation of anti-discrimination law, constituting an abuse of discretion. The Court should reverse and find DHS did not meet its burden on flight risk. *See, e.g.*, *L.G.M. v. Larocco*, No. 25-cv-2631 (PKC), 2025 U.S. Dist. LEXIS 147451 (July 31, 2025), at *25-26 (finding DHS did not meet its burden on flight risk

and ordering release); *see also Agonafer v. Sessions*, 859 F.3d 1198, 1206-07 (9th Cir. 2017) (BIA abused its discretion by failing to adequately consider the issues).

1. The IJ Arbitrarily Dismissed Ms. Doe's Prior Compliance with ICE

103. Flight risk considers whether a noncitizen is likely to comply with immigration authorities and appear as scheduled. "[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger…and whose appearance at future immigration proceedings can be reasonable ensured by a…bond or alternative conditions." *Hernandez v.* Sessions, 872 F.3d 976, 994 (9th Cir. 2017). A noncitizen's previous compliance with immigration authorities provides strong evidence that they will continue to comply.

104. Here, in finding Ms. Doe a flight risk, the IJ arbitrarily and erroneously disregarded Ms. Doe's prior compliance with ICE supervision. As the IJ acknowledged, prior to her detention in September 2024, Ms. Doe dutifully reported to ICE. Exh. 10 (IJ Bond Memo), at 5. Despite being unhoused, indigent, and without a driver's license, Ms. Doe nonetheless found transportation to ICE's office each month, demonstrating dedication to complying with ICE's requirements. In fact, when ICE told her to come in on a day that was not her "usual reporting day" in September 2024, Ms. Doe complied. Exh. 6, Tab H (Resp. Decl.), ¶ 44; Exh. 6, Tab P (I-213). ICE took her into custody when she appeared. *Id.* Ms. Doe's record of appearance and compliance with ICE instructions is strong evidence that she does *not* pose any risk of flight.

105. The IJ's dismissal of this demonstrated history of compliance was arbitrary and relied on clear factual error. *See Watkins,* 63 F.3d at 848-849 ("When the BIA distorts or disregards important aspects of the alien's claim, denial of relief is arbitrary, and the BIA is considered to have abused its discretion."). The IJ incorrectly stated that Ms. Doe had only appeared at ICE check ins "prior to her removal order being final." Exh. 8 (Transcript), at 10. But Ms. Doe's removal order became administratively final in 2011, Exh. 1, Tab F (BIA Decision), and she complied with ICE directives after that, including in September 2024 when she appeared as requested at an ICE office and was detained there. Exh. 6, Tab P (I-213). The finality of Ms. Doe's removal order has not changed since she dutifully complied with ICE directives in 2024. If anything, Ms. Doe now has even more reason to appear than she did in

September 2024, as the sole conviction that underlay her removal order has since been vacated and she is pursuing reopening and termination, which could restore her permanent status in the United States and make her eligible for naturalization. Exh. 1, Tab C (Vacatur); *see Patel*, 15 I&N Dec. at 667; *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (possibility of relief is relevant to showing lack of flight risk). The IJ's failure to consider Ms. Doe's compliance with ICE as a strong factor showing she would do so again if released was arbitrary and contrary to the law and the record.

2. The IJ Failed to Consider Evidence of Ms. Doe's Support in Finding Permanent Housing

106. The IJ also failed to properly consider the evidence regarding Ms. Doe's support in seeking permanent housing. Prior to her detention by ICE, Ms. Doe was making progress toward finding permanent housing, working intensively with a case manager at St. Mary's Community Services. Exh. 6, Tab H (Resp. Decl.), ¶ 42; Exh. 6, Tab K (St. Mary's Letter). St. Mary's has written a letter stating that it will continue to work with Ms. Doe to secure long-term housing upon her release (while she completes her six-month residential program). *Id.*

107. Yet the IJ improperly disregarded and dismissed this evidence, based again on an apparent misunderstanding of the record. The IJ seemed to believe that Ms. Doe worked with St. Mary's *before* her 2023 relapse and was prevented from continuing toward housing because of her own errors. *See* Exh. 10 (IJ Bond Memo), at 5 (Ms. Doe "made strides to find housing through 'St. Mary's Community Services,'…her [2023] relapse has eroded those strides which culminated in her current detention."); *see also id.* ("Even with the previous support of…St. Mary's….the applicant nevertheless relapsed."). Not so. Rather, Ms. Doe's work with St. Mary's began *after* her brief relapse and return to the community. She "began accessing case management services" at St. Mary's "in April 2024." Exh. 6, Tab K (St. Mary's Letter). Between April and August 2024, Ms. Doe regularly met with a case manager there and was "mak[ing] progress towards accessing the documents needed for long-term housing placement." *Id.* This progress was "eroded" not by Ms. Doe's actions, but rather by ICE's decision to detain Ms. Doe at a scheduled check-in in September 2024. *See* Exh. 6, Tab H (Resp. Decl.), ¶ 42, 44. The IJ's

suggestion that St. Mary's and other programs would not help Ms. Doe maintain consistent housing if released, because they did not help her in the past, was based on a faulty assumption, and was thus irrational and an abuse of discretion. *See Watkins,* 63 F.3d at 848-849; *Meza-Diaz v. Garland*, 118 F.4th 1180, 1190 (9th Cir. 2024) (indications that the agency did not consider the evidence "include misstating the record and failing to mention highly probative or potentially dispositive evidence").

108. Ms. Doe's work before her ICE detention with St. Mary's and her therapist *was* helping her find stable housing. In any case, more relevant to the question at issue in this bond proceeding: while engaging with these services Ms. Doe attended her check-ins with ICE. Neither DHS nor the IJ provided any reason to believe that that would not be true again.

3. The Agency's Analysis Violated Anti-Discrimination Law

109. The IJ and BIA reliance on Ms. Doe's mental health conditions to find her a flight risk was entirely arbitrary. The IJ and BIA both cited Ms. Doe's mental health conditions as reasons she was a flight risk. *See* Exh. 10 (IJ Bond Memo), at 5 ("Given the applicant's lack of housing, mental health issues, and problems with alcohol addiction, the Court finds…that the applicant poses an extreme risk of flight."); Exh. 12 (BIA Order) at 1 ("Due to her lack of housing and mental health and substance abuse issues, DHS established that she poses an extreme flight risk"). Yet neither acknowledged that, notwithstanding her mental health conditions and housing situation, Ms. Doe, with the help of her U.S. citizen husband, had previously complied with ICE conditions and was appearing at ICE check-ins prior to her detention. The agency provided no reason to conclude that Ms. Doe's mental health or housing would interfere with her appearance in the future when it posed no barrier in the past. These factors cannot meet DHS's burden to show by clear and convincing evidence that she is unlikely to appear. *See Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1976) (rejecting IJ's bond decision based on "factors [which] bear little if any relevance to the issue of whether or not the respondent is likely to appear for his deportation proceeding.").

110. Further, the IJ's use of Ms. Doe's mental illness and homelessness as a factor favoring detention was discriminatory. The federal government may not discriminate against individuals on the basis of disability. *See* 42 U.S.C.§ 12101 (Americans with Disabilities Act); 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act). A disability is any "physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1). Apart from prohibiting facial discrimination, Section 504 of the Rehabilitation Act also requires executive agencies such as EOIR to afford persons with disabilities "equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement" as similarly-situated individuals without the disability. *Alexander v. Choate*, 469 U.S. 287, 300-02 n.21 (1985) (citing 45 C.F.R. § 84.4(b)(2)).

111. Here, Ms. Doe has documented mental conditions and intellectual disabilities that limit her ability to undertake basic functions, including sleep, memory, and attention. *See* Exh. 6 Tab I (Dr. Nelson Aff.) ¶¶ 9a, 26-31, 34. She has been diagnosed with several mental health conditions, including complex post-traumatic stress disorder ("PTSD"), and alcohol abuse disorder. *Id.*, ¶ 10, 31. Additionally, she has been diagnosed with "borderline intellectual functioning" or "mild cognitive impairment," and is "impaired in terms of memory, orientation, and attention." *Id.*, ¶¶ 10, 26, 31. Because of Ms. Doe's intellectual disabilities, she was unable to finish high school, obtain a drivers' license, and work outside the house. These conditions qualify as disabilities under federal anti-discrimination law. *See* 42 U.S.C. § 12101(1)-(2); 28 C.F.R. § 39.103.

112. By citing Ms. Doe's "mental health issues" as a reason she is a flight risk and should be denied bond, the IJ and BIA explicitly discriminated against her on account of her disabilities, in violation of Section 504. *See* Exh. 10 (IJ Bond Memo), at 5; Exh. 12 (BIA Order), at 1. Meanwhile, the agency ignored or dismissed the positive factors associated with Ms. Doe's mental conditions, including the great effort she has taken to overcome the trauma she suffered in the past, her record of attendance at psychotherapy treatment, and her work with St. Mary's to obtain long-term housing, which was interrupted by ICE's decision to detain her in September 2024. *See* Exh. 6, Tab H (Resp. Decl.), ¶ 41-43; Exh. 6, Tab K (St. Mary's Letter). Using Ms.

Doe's mental conditions as evidence against her release, without considering the positive factors, was discriminatory and violated Section 504.

113. In any case, contrary to the IJ's statement, Ms. Doe's mental health and housing situation is no barrier to her appearance at any future hearing. Rather, the record shows that *despite* being unhoused, *despite* her mental health conditions, and *despite* the fact that her removal order was final, Ms. Doe reported to ICE regularly, maintained her sobriety, and was working with appropriate support to secure long-term housing when ICE detained her. The IJ's use of these factors against Ms. Doe was arbitrary, irrational, contrary to law and an abuse of discretion.

4. The IJ Failed to Consider Whether Any Amount of Bond or Conditions Would Mitigate Any Flight Risk

114. Finally, even if the IJ's concerns about flight risk had been proper—which they were not—the IJ was required under Ninth Circuit precedent to consider whether any amount of bond or alternative conditions of release would mitigate those concerns. *Hernandez,* 872 F.3d at 991 (due process requires consideration of whether alternative conditions or a lower bond would mitigate flight risk in immigration bond proceedings); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (immigration detention must "bear a reasonable relation to its purpose.") The IJ did not perform this analysis in Ms. Doe's case. And DHS provided no evidence that alternative conditions such as monitoring or a monetary bond would be ineffectual at ensuring Ms. Doe appears for any immigration appointment. DHS therefore could not have shown the necessity of detention by clear and convincing evidence. The IJ's failure to consider alternatives that would have mitigated any flight risk was legal error, and her decision was therefore an abuse of discretion. *See Hernandez,* 872 F.3d at 991. The Court should find that DHS did not establish that Ms. Doe is a flight risk necessitating further detention by clear and convincing evidence, and should order Ms. Doe released on bond or reasonable conditions. *See, e.g.*, *Hechavarria*, 358 F. Supp. 3d at 243-44.

IV. THE BIA VIOLATED DUE PROCESS BY FAILING TO ENGAGE IN UNBIASED DECISIONMAKING

115. "A neutral judge is one of the most basic due process protections." *Reyes-Melendez v. INS*, 342 F.3d 1001, 1006 (9th Cir. 2003). IJ's and the BIA must be unbiased, neutral decisionmakers that decide cases litigated between the DHS and noncitizen.

116. However, in practice, bond hearings are conducted in an informal manner by IJs who are susceptible to political pressure. *See* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024). Given these design features, it is unsurprising that they produce arbitrary results, like those in Ms. Doe's case.

117. Recent scholarship evaluating the quality of bond rulings has characterized bond hearings as "law-free zones" and "implicit bias minefields." Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025). To begin, IJs are not independent adjudicators. They are career attorneys who report to the Attorney General, making them "very susceptible to pressure from above to decide cases in a certain way." *Accord* Musalo, 65 B.C. L. Rev. at 2755; Holper, 74 Duke L.J. at 1010 (describing an IJ as "a prosecutor masquerading as a judge."). As an example, IJs hired under Presidents Bush, Obama, and Trump are more likely to have experience working for ICE deporting noncitizens, resulting in more denials of relief. Musalo, 65 B.C. L. Rev. at 2755. Nor does appellate review by the Board of Immigration Appeals (BIA) "play a corrective role[,] because it is subject to essentially the same institutional constraints as IJs." Musalo, 65 B.C. L. Rev. at 2756. A number of appellate judges "have suggested that the immigration courts are fundamentally incompetent, biased, or both." Adam B. Cox, *Deference, Delegation, and Immigration Law*, 74 U. Chi. L. Rev. 1671, 1682 (2007); *see, e.g.*, *Benslimane v Gonzales*, 430 F3d 828, 830 (7th Cir 2005) ("[T]he adjudication of [immigration] cases at the administrative level has fallen below the minimum standards of legal justice.").

118. In recent months, President Trump began a purge of immigration judges and BIA members, highlighting the agency's lack of independence.[9] Indeed, earlier this year, the BIA announced that it was nearly halving the number of BIA members, which resulted in the termination of the most recently-appointed BIA members, including *all* of the BIA members appointed under President Biden. Commentators suggested that "purge" was the point. *See* Law 360, *Trump Admin to Nearly Halve Immigration Appeals Board* (Feb. 20, 2025), online at: https://www.law360.com/articles/2300903/trump-admin-to-nearly-halve-immigration-appeals-board.

119. In the seven months since January 20, 2025, the BIA has issued at least 34 precedent decisions. *See* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 29*, online at https://www.justice.gov/eoir/volume-29. Either all or nearly all of these decisions found against the noncitizen, including many that reversed IJ decisions which had found in favor of the noncitizen in bond proceedings. *See id.*; *E.g.*, *Matter of Salas Pena*, 29 I&N Dec. 173 (BIA 2025); *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025). By contrast, in all of 2024 the BIA issued just 14 precedent decisions, some of which were in favor of the DHS while others favored the noncitizen. *See* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 28*, online at https://www.justice.gov/eoir/volume-28.

120. This context infected the bond proceedings in this case. Here, although DHS bore the burden of proof at the bond hearing, it presented no evidence relevant to flight risk or danger, and made few arguments in support of its position. Yet the IJ nevertheless found that DHS had met its burden, coming up with arguments on its behalf in support of her decision to deny bond. The IJ's reasoning suggests that she was predisposed to deny bond and did not act as a neutral decisionmaker and did not properly apply the burden of proof.

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[9] *See* Hamed Aleaziz, New York Times, *Trump Administration Fires Immigration Court Officials as Crackdown Begins*, January 20, 2025, available at: https://www.nytimes.com/2025/01/20/us/politics/trump-administration-fires-immigration-judges.html; Jason Allen, CBS News, *Immigration judge among 20 fired by Trump says "caseload will balloon" as courts already deal with backlog*, Feb. 20, 2025, available at: https://www.cbsnews.com/news/trump-immigration-judge-fired-caseload-will-balloon-kerry-doyle/.

121. Additionally, the BIA's denial of Ms. Doe's bond appeal with little analysis also evidences bias against the release of noncitizens like Ms. Doe. The BIA's lack of analysis provides no evidence that it "thought and heard" rather than "merely reacted" based on disfavor for noncitizens like Ms. Doe. *See Agonafer v. Sessions*, 859 F.3d 1198, 1206 (9th Cir. 2017). Here, the IJ and BIA have failed to show that they are impartial, neutral decisionmakers, and their decisions should thus be subject to scrutiny and reversed.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Procedural Due Process

122. Ms. Doe re-alleges and incorporates by reference the paragraphs above.

123. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

124. In a prolonged detention immigration bond hearing, due process requires the government to establish by clear and convincing evidence that a noncitizen poses a danger or risk of flight to justify further detention. *See Aleman Gonzalez*, 325 F.R.D. at 628; *Singh*, 638 F.3d at 1200.

125. Despite detaining Ms. Doe for more than 11 months, the government has not provided Ms. Doe with a bond hearing before a neutral decisionmaker at which the government was properly held to its burden of proof to justify further detention by clear and convincing evidence.

126. Additionally, the IJ and BIA decisions in the bond proceeding provided to Ms. Doe as a matter of due process violated the law, ignored evidence, and misapplied the legal standards. The IJ and BIA's finding that Ms. Doe is a danger to the community was arbitrary, irrational, contrary to law, and an abuse of discretion. Similarly, the IJ and BIA's finding that Ms. Doe is a flight risk is arbitrary, irrational, contrary to law, and an abuse of discretion.

127. Ms. Doe's continued detention is therefore unlawful, and violates procedural due process.

SECOND CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Substantive Due Process

128. Ms. Doe re-alleges and incorporates by reference the paragraphs above.

129. To comport with the Due Process Clause, civil detention must not be punitive. *Salerno*, 481 U.S. at 747. Civil detention that is unrelated to a valid regulatory purpose or excessive in relation to that purpose is punitive, in violation of substantive due process. *See Jones*, 393 F.3d at 934.

130. The only proper non-punitive purposes for civil immigration detention is to prevent danger to the community and risk of flight.

131. Ms. Doe's ongoing civil immigration detention is excessive in relation to any proper purpose, as she does not pose a flight risk nor danger to the community, and her continued detention is unnecessary to achieve the government's objectives. Continued detention is therefore punitive and violates substantive due process.

THIRD CLAIM FOR RELIEF

Violation of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(a)(6) and Implementing Regulations

132. Ms. Doe re-alleges and incorporates by reference the paragraphs above.

133. The INA allows for continued detention of individuals beyond the removal period only in certain circumstances, including when they pose a danger to the community or risk of flight. 8 U.S.C. § 1231(a)(6). To determine whether a noncitizen poses a danger or flight risk, immigration authorities consider the factors set forth in *Matter of Guerra*, 21 I&N Dec. 37, 40-41 (BIA 2006).

134. Ms. Doe is detained by Respondents under 8 U.S.C. § 1231(a)(6).

135. In Ms. Doe's bond proceedings, the IJ and BIA failed to properly consider the *Matter of Guerra* factors, ignored relevant evidence, and misapplied the legal standards. Their decisions finding Ms. Doe to be a danger to the community were arbitrary, irrational, contrary to law and an abuse of discretion. Similarly, their decisions finding Ms. Doe to be a flight risk were arbitrary, irrational, contrary to law and an abuse of discretion.

136. Ms. Doe's continued detention therefore violates the Immigration and Nationality

Act and implementing regulations.

FOURTH CLAIM FOR RELIEF

Violation of the Administrative Procedures Act ("APA"), 5 U.S.C. § 702

137. Ms. Doe re-alleges and incorporates by reference the paragraphs above.

138. The APA requires courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

139. The BIA's decision dismissing Ms. Doe's appeal in her bond proceedings is a final agency action not subject to any further process of internal agency review.

140. The IJ and BIA's decisions denying Ms. Doe bond are arbitrary, capricious, an abuse of discretion, and not in accordance with the law. They must therefore be set aside under the APA.

FIFTH CLAIM FOR RELIEF

Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794

141. Ms. Doe re-alleges and incorporates by reference the paragraphs above.

142. Section 504 of the Rehabilitation Act prohibits discrimination against persons with disabilities in federal government programs.

143. A disability is any "physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1).

144. Ms. Doe is a person with a disability, as defined by the Rehabilitation Act.

145. The IJ and BIA decisions discriminated against Ms. Doe by finding she poses a flight risk and denying her release from detention on account of her mental health conditions. The IJ and BIA decisions are unlawful and discriminatory, in violation of Section 504 of the Rehabilitation Act.

PRAYER FOR RELIEF

WHEREFORE, Ms. Doe requests that the Court:

1) Assume jurisdiction over this matter;
2) Declare the IJ and BIA decisions denying her request for custody redetermination contrary to law and an abuse of discretion, and declare her continued detention unlawful;

3) Issue a Writ of Habeas Corpus and order Respondents to immediately release Ms. Doe from their custody because the DHS has not established by clear and convincing evidence that she poses a danger or risk of flight;

4) Alternatively, order Respondents to provide Ms. Doe with a new custody hearing before a neutral decisionmaker at which the government must establish by clear and convincing evidence under the proper legal standards that Ms. Doe presents a risk of flight or danger, and that no alternatives to detention can sufficiently protect its interests, in order to deny bond;

5) Enjoin Respondents from causing Ms. Doe any additional harm during the pendency of this litigation, such as by transferring her farther away from legal Counsel or placing her into solitary confinement;

6) Award reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

7) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

Date: August 25, 2025

/s/ Peter Weiss
Peter Weiss
PANGEA LEGAL SERVICES

Pro Bono Attorney for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Ms. Doe because I am her attorney. As Ms. Doe's attorney, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: August 25, 2025

/s/ Peter Weiss
Peter Weiss

Pro Bono Attorney for Petitioner

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JANE DOE,

Petitioner,

v.

CHRISTOPHER J. LaROSE, Senior Warden, Otay Mesa Detention Center; GREGORY J. ARCHAMBEAULT, Field Office Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No. '25CV2201 W DDL

DECLARATION OF PETER OKIE WEISS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

DECLARATION OF PETER OKIE WEISS

I, Peter Okie Weiss, declare under penalty of perjury:

1. I am an attorney licensed and in good standing in California. I work at Pangea Legal Services as a co-director and immigration attorney. My business address is 391 Sansome St., Suite 500, San Francisco, CA 94108.
2. I represent Ms. Doe in her Petition for Habeas Corpus before this Court ("Habeas Petition"), which challenges decisions of an Immigration Judge ("IJ") and Board of Immigration Appeals ("BIA") denying Ms. Doe's request for custody redetermination.
3. I also represented Ms. Doe in her petition for mandamus and complaint for declaratory and injunctive relief in a related case previously before this Court, *Doe v. Bondi*, No. 3:25-cv-00805-BJC-JLB ("*Doe I*"). Concurrently with the filing of this declaration, I am filing on Ms. Doe's behalf a notice of related case regarding *Doe I*. I have informed counsel for the Defendants in *Doe I*, Assistant U.S. Attorney Erin Dimbleby, that I intended to file this Habeas Petition, and have served a notice of related cases on Ms. Dimbleby. My understanding is Ms. Dimbleby's office will also be representing Respondents in this case.
4. Ms. Doe is currently detained by Immigration and Customs Enforcement ("ICE") at Otay Mesa Detention Facility in San Diego, California. Ms. Doe has been detained by ICE at Otay Mesa since September 2024.
5. I represented Ms. Doe in her custody proceedings before the IJ and BIA.
6. On February 10, 2025, I submitted a motion for a custody redetermination hearing to the Immigration Court, along with supporting evidence.
7. On February 14, 2025, the Immigration Judge set a bond hearing date and required the Department of Homeland Security ("DHS") to file a statement of position on Ms. Doe's bond eligibility by February 24, 2025. The DHS did not file any statement of position or brief by that date.

8. On February 24, 2025, I filed a motion to continue the custody hearing based on my inability to appear on the date scheduled, which the IJ granted. The IJ reset the custody hearing for March 11, 2025.

9. On March 7, 2025, I filed supplemental evidence in support of Ms. Doe's request for custody redetermination, including a sworn declaration from Ms. Doe, a psychological evaluation, letters and documents regarding Ms. Doe's rehabilitation history and plan if released from detention, evidence of Ms. Doe's family and community ties, evidence that she was a victim of severe domestic violence, and evidence relating to her motion to reopen based on the vacatur of the sole conviction underlying her removal order.

10. On March 10, 2025, the Department of Homeland Security ("DHS") submitted two documents into evidence: (1) a Ninth Circuit docket report; and (2) the Board of Immigration Appeals' decision dismissing Ms. Doe's appeal in May 2011. This was the only evidence submitted by the DHS in these custody proceedings. DHS submitted no criminal court documents, arrest reports, or any other evidence.

11. IJ Ana Partida held a custody redetermination hearing on March 11, 2025. At the beginning of the hearing, IJ Partida determined that Ms. Doe was detained under 8 U.S.C. § 1231(a)(6) and entitled to a custody hearing under an injunction in *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. June 5, 2018) ("*Aleman*"), where the burden is on the DHS to justify further detention.

12. IJ Partida then gave the DHS, as the party with the burden of proof, the opportunity to question Ms. Doe. The government declined the opportunity to examine Ms. Doe, and instead simply made oral arguments about whether Ms. Doe should be granted release on bond.

13. After hearing arguments from both parties, the IJ orally announced her decision that she was denying bond, finding Ms. Doe to be a danger and flight risk.

14. Ms. Doe reserved appeal. The DHS explicitly waived appeal, and did not further challenge the IJ's decision that Ms. Doe was an *Aleman* class member entitled to an *Aleman* custody hearing.

15. On March 13, 2025, I timely filed on Ms. Doe's behalf an appeal of the IJ's bond decision with the BIA.

16. On March 19, 2025, the IJ issued a written bond memorandum explaining her reasons for denying bond.

17. On May 6, 2025, I timely filed on Ms. Doe's behalf a brief to the BIA challenging the IJ's bond decision. The DHS did not file a brief by the deadline set by the BIA.

18. On July 23, 2025, the BIA issued a decision dismissing Ms. Doe's appeal in custody proceedings.

19. The Executive Office for Immigration Review ("EOIR"), which oversees the immigration courts, keeps audio recordings of all hearings, including custody proceedings. However, EOIR does not provide a written transcript of custody proceedings, even those on appeal.

20. Following Ms. Doe's custody redetermination hearing on March 11, 2025, my office requested and obtained from the EOIR a copy of the digital audiorecording of the hearing. I listened to and transcribed this hearing, and created an unofficial transcription of the March 11, 2025 that is true and accurate to the best of my ability.

21. Concurrently with her bond proceedings, Ms. Doe was also pursuing a motion to reopen with the BIA. The motion to reopen was based in part on a California state court's vacatur for constitutional error of the sole conviction that was the basis for Ms. Doe's 2011 removal order. On July 23, 2025, the same day the BIA denied her bond appeal, the BIA also denied Ms. Doe's motion to reopen. Ms. Doe has filed a petition for review of that order with the U.S. Court of Appeals for the Ninth Circuit.

22. Ms. Doe sought a stay of removal from the Ninth Circuit, and the Court has issued an order staying her removal while the Ninth Circuit further considers that motion. The government's response to the stay motion is due September 29, 2025. The opening brief in Ms. Doe's petition for review is due October 16, 2025. The answering brief is due November 17, 2025, and a reply brief is permitted within 21 days after service of the answering brief.

23. In support of Ms. Doe's Petition for Habeas Corpus, I am submitting the following documents. All of these documents except for the unofficial transcript are part of the official Record of Proceedings ("ROP") in Ms. Doe's case, and these documents include all the evidence submitted by both parties for the bond record. Exhibits 1-7 are the same exhibits that were marked into evidence by the IJ during the March 11, 2025 hearing with the same numbering; Exhibit 8 is the unofficial transcript of that hearing; and Exhibits 9-12 are documents made part of the ROP subsequent to the hearing. All of the following attachments are true and correct copies of the documents listed below, with select redactions to protect Ms. Doe's identity. The unredacted versions are on file with my office:

- **Exhibit** 1: Ms. Doe's Request for Custody Redetermination Hearing with Supporting Evidence, dated February 10, 2025
  - Tab A: Declaration of Peter Weiss, dated February 3, 2025
  - Tab B: U.S. Court of Appeals for the Ninth Circuit, Docket Report, Case No. 24-XXXX, as of February 3, 2024
  - Tab C: Vacatur Order of Superior Court of California, County of San Joaquin, in Case No. CR-2007-7748, dated December 10, 2024
  - Tab D: Notice to Appear, dated November 19, 2009
  - Tab E: Immigration Judge decision, dated January 13, 2011
  - Tab F: Board of Immigration Appeals decision, dated May 31, 2011
- **Exhibit** 2: Ms. Doe's Counsel's Entry of Appearance, dated February 10, 2025
- **Exhibit** 3: IJ Order Setting Custody Redetermination Hearing and Ordering DHS to File a Statement of Position, dated February 14, 2025
- **Exhibit** 4: Ms. Doe's Motion for Continuance, dated February 24, 2025
- **Exhibit** 5: IJ Order Granting Continuance, dated March 3, 2025
- **Exhibit** 6: Ms. Doe's Supplemental Evidence in Support of Custody Redetermination Hearing, dated March 7, 2025

- Tab G: Memorandum of Creation of Record of Lawful Permanent Resident Status, dated October 31, 1985
- Tab H: Declaration of Ms. Doe in Support of Custody Redetermination, dated March 7, 2025
- Tab I: Affidavit of Dr. Nicholas Nelson, M.D., dated December 16, 2024
- Tab J: Letter from Carrie Williams, Director of Women's Programs, Gospel Center Rescue Mission, dated February 24, 2025
- Tab K: Letter from Annette DePauli, MSW, Senior Director of Programs at St. Mary's Community Services, dated February 26, 2025
- Tab L: Letter from Ms. Doe's U.S. citizen husband, dated February 26, 2025, with ID
- Tab M: Marriage Certificate of Ms. Doe and her husband, dated June 25, 2023
- Tab N: Letter from Ms. Doe's U.S. citizen sister, dated February 26, 2025, with ID
- Tab O: Letter from Darrell W. Smith, Pastor, A Greater Fellowship Church, dated December 17, 2024
- Tab P: U.S. Dept. of Homeland Security Form I-213, dated Sept. 3, 2024
- Tab Q: Filing Receipt Notice for Motion to Reopen with Board of Immigration Appeals (BIA), dated December 31, 2024
- Tab R: Screenshot of EOIR Automated Case Information web page, accessed March 7, 2025
- Tab S: Criminal Complaint Against S., Ms. Doe's ex-partner, Case No. SPXX-XXX, dated January 8, 1998
- Tab T: Criminal Complaint Against S., Ms. Doe's ex-partner, Case No. SPXX-XXX, dated May 9, 2005

- Tab U: Criminal Complaint Against S., Ms. Doe's ex-partner, Case No. SPXX-XXX, SPXX-XXX, dated October 19, 2005, and restraining order
- Tab V: *Aleman Gonzalez v. Sessions*, Order Re: Defendants' Motion for Clarification of the Court's June 5, 2018 Order, No. 3:18-cv-01869-JSC (N.D. Cal. July 20, 2018), ECF No. 42

- **Exhibit** 7: DHS Evidence, dated March 10, 2025
  - Tab A: U.S. Court of Appeals for the Ninth Circuit, Docket Report, Case No. 24-XXXX, undated
  - Tab B: Board of Immigration Appeals decision, dated May 31, 2011
- **Exhibit** 8: Unofficial Transcript of Ms. Doe's Custody Redetermination Hearing, dated March 11, 2025
- **Exhibit** 9: Ms. Doe's Notice of Appeal, dated March 13, 2025
- **Exhibit** 10: Bond Memorandum of the Immigration Judge, dated March 19, 2025
- **Exhibit** 11: Ms. Doe's Brief in Support of Custody Appeal, dated May 6, 2025
- **Exhibit** 12: Decision of the BIA, dated July 23, 2025

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted,

Date: August 25, 2025

/s/ Peter Okie Weiss
Peter Okie Weiss