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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; PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No. 25-cv-02201-BJC-JLB

**RETURN IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

## I. INTRODUCTION

Petitioner Jane Doe asks this Court to reverse the decision of an immigration judge—affirmed by the Board of Immigration Appeals (BIA)—denying bond based on findings that Petitioner is a danger to the community and a flight risk. Petitioner argues that the Department of Homeland Security (DHS) violated due process and statutory authority by denying Petitioner's bond request. Petitioner requests that the Court order her release from custody or, alternatively, that Respondents provide her with 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." ECF No. 1 at ¶ 4. The Court should deny the habeas petition. Petitioner cannot show that the government failed to satisfy its burden of demonstrating by clear and convincing evidence that Petitioner's continued detention would prevent danger to the community or that Petitioner is a flight risk.

## II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a 48-year-old native and citizen of Cambodia. *Id.* at ¶¶ 14, 20. She was admitted into the United States as a refugee when she was approximately eight years old. *Id.* at ¶¶ 14, 21. In 1988, Petitioner adjusted her status to that of a lawful permanent resident, retroactive to 1985. *Id.* at ¶ 21.

In 2001, Petitioner was convicted of public intoxication after she was found drunk in the halls of her apartment building with her child. *Id.* at ¶ 31. Later that year, she was found drinking in a park. *Id.*

In November 2006, Petitioner was arrested after bringing her son to the hospital with a serious head injury. *Id.* at ¶ 32. In September 2009, she plead guilty to one count of child abuse in violation of California Penal Code § 273d(a), and one count of child endangerment in violation of California Penal Code § 273a(a). *Id.* at ¶¶ 33, 35; ECF No. 1-2 at p. 34 (Ex. E at p. 3).

In November 2009, Immigration and Customs Enforcement (ICE) placed Petitioner in removal proceedings, alleging that she was removable under 8 U.S.C.

§ 1227(a)(2)(E)(i) as someone "who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment. . . ." *See* ECF No. 1 at ¶ 39; Declaration of Marielle Ceja ("Ceja Decl.") at ¶ 9, Ex. 2 (Notice to Appear).[1] In her removal proceedings, Petitioner applied for cancellation of removal, asylum, withholding of removal, and relief under the Convention Against Torture. ECF No. 1 at ¶ 39. On January 13, 2011, an immigration judge denied all requests for relief and ordered Petitioner removed to Cambodia and/or Thailand. *Id.*; Ceja Decl. at ¶ 10, Ex. 3 (Memorandum Decision and Order of the Immigration Court). Petitioner appealed the immigration judge's decision to the BIA, but the appeal was ultimately dismissed on May 31, 2011, and the removal order became final and executable. ECF No. 1 at ¶¶ 39–40. In 2011, Petitioner was released from ICE custody on an order of supervision after ICE was unable to obtain travel documents for Petitioner from Cambodia or Thailand. *Id.* at ¶ 40.

In March 2023, Petitioner got into a fight with someone and was arrested and convicted of false imprisonment. ECF No. 1 at ¶ 44; ECF No. 1-2 at p. 92 (¶ 40).

On September 3, 2024, Petitioner was taken into custody pending removal. Ceja Decl. at ¶ 11. On March 27, 2025, a travel document was issued for Petitioner's removal to Cambodia. Ceja Decl. at ¶ 11.

In December 2024, Petitioner's 2009 guilty plea was vacated by a judge of the San Joaquin County Superior Court on the basis that "her plea was not entered knowingly, voluntarily, and intelligently as a result of inadequate and prejudicial immigration advice by her counsel regarding the consequences of her plea . . . ." ECF No. 1-2 at p. 26 (Ex. 1, Tab C); *see also* ECF No. 1 at ¶ 36. Upon vacatur, the charging document was amended to charge Petitioner with burglary in violation of California

[1] On April 3, 2025, Petitioner commenced a separate action in this Court, Case No. 25-cv-00805-BJC-JLB, seeking to compel the BIA to issue a decision on her motion to reopen before removal. On July 28, 2025, after the BIA had denied Petitioner's motion to reopen, the Court granted the parties' joint motion to dismiss that action. A copy of the Declaration of Marielle Ceja, with exhibits, filed on July 22, 2025, in Case No. 25-cv-00805-BJC-JLB (ECF Nos. 45-1, 45-2) is attached to this Opposition as Exhibit A.

Penal Code § 459 and misdemeanor child endangerment in violation of California Penal Code § 273a(b), and her guilty plea was made applicable to these amended charges. ECF No. 1 at ¶ 36; ECF No. 1-2 at pp. 26–27 (Ex. 1, Tab C).

On December 23, 2024, more than ten years after the conclusion of her immigration proceedings and appeal, Petitioner filed an untimely motion to reopen her removal proceedings with the BIA.[2] *See* ECF No. 1 at ¶ 51; 8 C.F.R. § 1003.2(c)(2). On July 23, 2025, the BIA denied Petitioner's motion to reopen. ECF No. 1 at ¶ 55.

On March 11, 2025, an immigration conducted a custody redetermination hearing and denied Petitioner's request for a change in custody status, finding she poses both a danger to the community and a flight risk. Ceja Decl. at ¶ 12; ECF No. 1 at ¶ 58.

On March 13, 2025, Petitioner appealed to the BIA the immigration judge's decision denying a change in custody. Ceja Decl. at ¶ 12; ECF No. 1 at ¶ 59. On March 19, 2025, the immigration judge issued a written memorandum of the decision denying the change in custody status to facilitate review of Petitioner's appeal. Ceja Decl. at ¶ 12, Ex. 4 (Bond Memorandum of the Immigration Judge); ECF No. 1 at ¶ 60; ECF No. 1-2 at pp. 184–89 (Ex. 10). On July 23, 2025, the BIA dismissed Petitioner's bond appeal. ECF No. 1 at ¶ 62; ECF No. 1-2 at pp. 234–35 (Ex. 12).

On July 23, 2025, Petitioner filed a petition for review in the Ninth Circuit of the BIA's dismissal of her motion to reopen, that proceeding is currently pending, and a stay of removal is in place pending resolution of that proceeding. ECF No. 1 at ¶ 55.

On August 25, 2025, Petitioner commenced this action seeking judicial review of the immigration judge's March 13, 2025 denial of bond, and the BIA's July 23, 2025 dismissal of her bond appeal, on the grounds that these decisions violated: (1) her Fifth

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[2] "Where a person has been ordered removed from the country, state court vacaturs can sometimes vitiate the grounds for removal." *Bent v. Garland*, 115 F.4th 934, 940 (9th Cir. 2024); *see also Alcazar-Martinez v. Garland*, No. 21-1382, 2024 WL 3824650, at *2 (9th Cir. Aug. 15, 2024) ("It is an open question . . . 'whether the vacatur of [a petitioner's] conviction pursuant to California Penal Code § 1473.7(a)(1) demonstrates that [he] faced "extraordinary circumstances" for purposes of equitable tolling'" when considering a motion to reopen before the BIA) (quoting *Guzman-Nunez v. Garland*, No. 21-1118, 2023 WL 8889558, at *3 (9th Cir. Dec. 26, 2023)).

Amendment procedural due process rights; (2) her Fifth Amendment substantive due process rights; (3) statutory provisions under 8 U.S.C. § 1231(a)(6) applicable to her request for custody determination; (4) the Administrative Procedures Act, 5 U.S.C. § 702, because they amount to agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; and (5) the Rehabilitation Act, 29 U.S.C. § 794, because decisions discriminated against her by finding she poses a flight risk based on her mental health conditions. *See generally* ECF No. 1. Petitioner seeks an order releasing her from ICE custody or, alternatively, a "proper" bond hearing. *Id.* at ¶ 4.

## III. LEGAL STANDARDS

### A. Federal Habeas Jurisdiction.

Federal courts have jurisdiction to hear writs of habeas corpus when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). That jurisdiction extends to aliens in immigration detention. *See Demore v. Kim*, 538 U.S. 510, 517 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

### B. Clear and Convincing Evidence of Dangerousness or Flight Risk.

An immigration judge's analysis of whether an individual poses a danger to the community or a flight risk is guided by numerous factors:

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

*Singh v. Holder*, 638 F.3d 1196, 1206 n.5 (9th Cir. 2011) (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)). Immigration judges "need not mechanically address

every *Guerra* factor in making a bond determination." *Hilario Pankim v. Barr*, No. 20-cv-02941-JSC, 2020 WL 2542022, at *8 (N.D. Cal. May 19, 2020) (citing *Guerra*, 24 I. & N. Dec. at 40).

**C. The Court's Role is to Determine Whether the Immigration Judge Abused Her Discretion.**

"[T]he determination whether an alien is 'dangerous' for immigration-detention purposes is a mixed question of law and fact and is reviewable as a 'question of law.'" *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024) (citing *Singh*, 638 F.3d at 1202). "[A] mixed question that 'requires a court to immerse itself in facts . . . suggests a more deferential standard of review" than de novo review. *Id.* at 784 (quoting *Wilkinson v. Garland*, 601 U.S. 209, 222 (2024)). Accordingly, "[w]hen questions require a close review of agency-found facts, like the 'dangerousness' determination, [courts] review for an abuse of discretion." *Id.* (citing *Konou v. Holder*, 750 F.3d 1120, 1127 (9th Cir. 2014)). "Under an abuse of discretion standard, '[courts] cannot reweigh evidence . . . [but] can [only] determine whether the BIA applied the correct legal standard." *Id.* at 785 (quoting *Konou*, 750 F.3d at 1127); *see also Hilario Pankim*, 2020 WL 2542022, at *8 ("In reviewing the IJ's determination, district courts 'may not second-guess the [IJ's] weighing of the evidence.'") (quoting *Calmo v. Sessions*, No. C 17-07124 WHA, 2018 WL 2938628, at *4 (N.D. Cal. June 12, 2018)) .

*In Martinez*, the petitioner argued, like Petitioner here, that "the BIA failed to apply the correct clear-and-convincing burden of proof and review all the evidence in the record. He also allege[d] that the BIA impermissibly shifted the burden of proof to him." 124 F.4th at 785. The Ninth Circuit rejected these arguments:

> Generally, in the absence of any red flags, we take the BIA at its word. For example, "[w]hen nothing in the record or the BIA's decision indicates a failure to consider all the evidence," we will rely on the BIA's statement that it properly assessed the entire record. *Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011). We do not require the BIA to "discuss each piece of evidence submitted." *Id.* Similarly, we accept that the BIA "applied the correct legal standard" if the BIA "expressly cited and applied [the relevant

> caselaw] in rendering its decision." *See Mendez-Castro v. Mukasey*, 552 F.3d 975, 980 (9th Cir. 2009). But when there is an indication that something is amiss, like if the BIA "misstat[es] the record" or "fail[s] to mention highly probative or potentially dispositive evidence," we do not credit its use of a "catchall phrase" to the contrary. *Cole*, 659 F.3d at 771-72.

*Id.*; *see also Torres-Aguilar v. I.N.S.*, 246 F.3d 1267, 1270 (9th Cir. 2001) ("A decision by the BIA or immigration judge violates due process if the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case."). The Ninth Circuit reasoned that there were "no such red flags" on which to deviate from the general presumption that courts accept the BIA's representation that it considered all the evidence. *Martinez*, 124 F.4th at 785–86.

## IV. ARGUMENT

### A. The Immigration Judge Applied the Correct Burden of Proof.

As an initial matter, the immigration judge expressly stated that she "considered all the information, evidence, and arguments presented by the parties" when concluding that "DHS met its burden to demonstrate that [Petitioner] poses a danger to the community and an extreme flight risk in the alternative." ECF No. 1-2 at p. 188. Thus, *Martinez* dictates that the Court start with the presumption that the immigration judge considered all the evidence.

Next, Petitioner acknowledges that the immigration judge identified the correct burden of proof, that is, that the government bore the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk. *See* ECF No. 1 at ¶ 85; *see also* ECF No. 1-2 at p. 184 (recognizing that "DHS bore the burden in these proceedings, to demonstrate by clear and convincing evidence, that continued detention is justified because the noncitizen is a danger to the community or alternatively a flight risk."). Nevertheless, Petitioner contends that the immigration judge did not, in fact, place the burden of proof on the government. *See* ECF No. 1 at ¶ 85. Petitioner's arguments are unavailing.

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First, Petitioner argues that the immigration judge did not place the burden of proof on the government on the issue of whether Petitioner is a flight risk. Petitioner relies on the immigration judge's statement that she was "not convinced that the applicant will attend future hearings." ECF No. 1 at ¶ 86. To support this argument, Petitioner cites the Southern District of New York's decision in *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 241 (S.D.N.Y. 2019). *See* ECF No. 1 at ¶ 86. But the *Hechavarria* decision does not contain the quoted language Petitioner attributes to that case. Instead, the quoted language appears in an unpublished decision from the Southern District of New York, *R.R.M.C. v. Decker*, No. 22 Civ. 2952 (LGS), 2022 WL 4639674, at *4 (S.D.N.Y. Sept. 30, 2022). Moreover, the immigration judge expressly stated that she based her conclusion that Petitioner is a flight risk on Petitioner's "lack of housing, mental health issues, and problems with alcohol addiction . . . ." ECF No. 1-2 at p. 188. The immigration judge's statement that she was "not convinced" that Petitioner would attend future hearings was not the basis for the flight-risk finding, but rather an explanation for rejecting Petitioner's argument that her prior check-in compliance was insufficient to overcome the "precariousness of [Petitioner's] situation" regarding housing, mental health issues, and alcohol addiction. *Id.* This explanation does not equate to an improper shifting of the burden of proof to Petitioner.

Second, Petitioner argues that the immigration judge did not place the burden of proof on the government on the issue of whether Petitioner is a danger to the community. *See* ECF No. 1 at ¶ 86. Petitioner argues that the immigration judge improperly found she is a danger when the immigration judge stated at the bond hearing that she was "unconvinced by [Petitioner's] release plan because she had 'concerns' about [Petitioner's] commitment to treatment." *Id.* Petitioner thus argues that the immigration judge improperly based her conclusion on speculation or "vague 'concerns'" when the conclusion should be reached only based on a finding that it would be "highly probable" the treatment plan would be ineffectual. *Id.* (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)). The immigration judge based her finding of

dangerousness not on speculation, but rather on Petitioner's lengthy criminal history, including a recent 2023 conviction for false imprisonment. ECF No. 1-2 at p. 186. This Court may not reweigh the evidence considered by the immigration judge. *Martinez*, 124 F.4th at 785; *Konou*, 750 F.3d at 1127.

Third, Petitioner argues that the immigration judge did not place the burden of proof on the government based on the evidence submitted, because the government submitted only two documents—a Ninth Circuit docket printout and a BIA order from 2011—and did not question Petitioner at the bond hearing. ECF No. 1 at ¶ 87. Petitioner goes on to question how the government could have met its burden of proof without presenting evidence or questioning Petitioner, citing *Vitug v. Holder*, 723 F.3d 1056, 1066 (9th Cir. 2013), for the purported holding that the government must show some "individualized evidence" when it has the burden of proof. ECF No. 1 at ¶ 87. But *Vitug* did not reach this holding, and does not even use the phrase "individualized evidence." Moreover, Petitioner's argument ignores the fact that the immigration judge relied on evidence introduced by Petitioner herself—for example, evidence regarding her 2023 conviction for false imprisonment. "An [immigration judge] may rely 'upon any information that is available . . . or that is presented to him or her by either party." *Hilario Pankim*, 2020 WL 2542022, at *9 (citing 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service."); *Guerra*, 24 I. & N. Dec. at 39). Petitioner cites no authority establishing that an immigration judge's reliance on evidence submitted by an individual seeking release from custody serves to shift the burden from the government to that individual. And there is good reason not to adopt Petitioner's reasoning. In this case, it would have required the government to introduce the same evidence that Petitioner had already submitted for consideration. The law does not require such inefficiency.

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Fourth, Petitioner argues that the immigration judge improperly relied on factual findings made by a different immigration judge in 2011 during Petitioner's removal proceedings. ECF No. 1 at ¶¶ 88–89. Petitioner first argues that such reliance is improper because the government was required to introduce the underlying evidence from the removal proceedings. But Petitioner misrepresents the holding in *In re Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999) (en banc). In that proceeding before the BIA following an immigration judge's bond decision requiring an alien's release from custody, the alien asked the BIA to "consider the information presented to the Immigration Judge during the underlying removal proceeding in connection with [the] bond appeal," "[e]vidently in an effort to overcome some of the deficiencies in the record . . . ." *Id.* at 1115. The BIA confirmed that "[i]nformation adduced during a removal hearing . . . may be considered during a custody hearing so long as it is made part of the bond record." *Id.* This does not mean—as Petitioner contends—that the underlying evidence is required to be introduced in the bond proceeding. Rather, a summary of the underlying evidence can be stated in the immigration judge's bond memorandum:

> [The BIA] will not consider the evidence presented during the respondent's removal proceedings, except to the extent that it is already part of this bond record. 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 *(such as through a summary of merits hearing testimony that is reflected in the Immigration Judge's bond memorandum).* Otherwise, it will not be part of the bond record available for our review on appeal.

*Id.* (emphasis added). The italicized parenthetical—which Petitioner omitted in her discussion of this BIA decision—and the preceding phrase, "or otherwise reflected in the bond record," confirm that the underlying evidence need not be introduced at the bond proceeding. It is sufficient for the immigration judge to summarize the underlying evidence in the bond memorandum, which is exactly what the immigration judge did in this case in her bond memorandum dated March 19, 2025.

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Petitioner next argues that the immigration judge's reliance on the 2011 bond decision "exacerbated the burden-of-proof problem" because she adopted factual findings made in 2011 when Petitioner had the burden of proof to establish eligibility from relief from removal. ECF No. 1 at ¶ 89. Petitioner's suggestion that issue preclusion therefore does not apply is a red herring. Nothing in the immigration judge's recent bond memorandum dated March 19, 2025, suggests that the immigration judge viewed the 2011 factual findings as conclusively determined pursuant to the rule of issue preclusion. The underlying factual findings exist, they were made part of the bond record, and the immigration judge properly considered whether they support a finding of danger or flight risk. Moreover, the immigration judge's findings were also based on more recent evidence Petitioner submitted, including evidence that she was convicted in 2023 of false imprisonment after she drank alcohol and got into a fight. ECF No. 1-2 at pp. 92 (¶ 40), 186.

Finally, Petitioner argues that the BIA "entirely failed" to address the burden-of-proof arguments she raised in her brief to the BIA. ECF No. 1 at ¶ 90. This is inaccurate. In upholding the bond denial, the BIA stated that Petitioner's "arguments on appeal do not persuade us of any reversible error in the Immigration Judge's decision." ECF No. 1-2 at p. 235 (Ex. 12).

**B. The Immigration Judge's Denial of Bond Based on Dangerousness Was Not Legally Erroneous, Arbitrary, or an Abuse of Discretion.**

Petitioner argues that the immigration judge's conclusion that Petitioner poses a danger to the community was erroneous because the immigration judge did not assess *current* dangerousness and failed to consider all the evidence. The Court should reject these arguments.

**1. The immigration judge considered Petitioner's current dangerousness.**

Petitioner argues that the immigration judge failed to assess whether Petitioner poses a *current* danger to the community, instead "focused solely on *past* conduct,

without considering current circumstances," and "wrongly suggested DHS could meet its burden solely by showing that in the past [she] 'engaged in' conduct that 'presented' a danger, without ever establishing a *current* danger." ECF No. 1 at ¶¶ 92–93 (emphases in original). This argument does not comport with the Ninth Circuit's analysis of the impact of criminal history in a bond determination.

In *Singh*, the Ninth Circuit recognized that "[t]he *Guerra* factor most pertinent to assessing dangerousness directs immigration judges to consider 'the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses.'" *Singh*, 638 F.3d at 1206 (quoting *Guerra*, 24 I. & N. Dec. at 40). "Although an alien's criminal record is surely relevant to a bond assessment, . . . criminal history alone will not always be sufficient to justify denial of bond on the basis of dangerousness. Rather, the recency and severity of the offenses must be considered." *Singh*, 638 F.3d at 1206. The Ninth Circuit thus acknowledged that "criminal history alone" can sometimes be sufficient to deny bond based on the applicant's danger to the community.

In the present case, the immigration judge discussed the evidence underlying her child abuse conviction, including that Petitioner's "actions resulted in the severe and permanent impairment of one of [Petitioner's] children, an infant at the time, indicating a callous disregard for the safety of others including her own children." ECF No. 1-2 at p. 186. The immigration judge described the record as including evidence that Petitioner's son underwent emergency surgery requiring removal of a portion of his skull to relieve brain swelling; bruising and swelling on her son's head, face, and spine; a bite mark on his thigh; and "permanent brain damage" due to his injuries. *Id.* The immigration judge acknowledged that this 2006 "incident is not recent in time," but "underscore[d] the severity of [Petitioner's] conduct which resulted in the permanent impairment of her then infant son . . . ." *Id.* The immigration judge further reasoned that although the state court had vacated Petitioner's child abuse conviction under California Penal Code §§ 273d(a) and 273a(a) "on account of procedural and substantive defects

in the proceedings which resulted in a legally invalid plea," "the seriousness of the arrest and the factual allegations surrounding the incident" were relevant and the immigration judge could properly "consider any evidence in the record that is probative and specific, such as criminal arrests, vacaturs, and complaints." ECF No. 1-2 at p. 185 (citing *Guerra*, 24 I. & N. Dec. at 40–41).

Moreover, contrary to Petitioner's argument, the immigration judge's analysis of Petitioner's current danger to the community was not based solely on the 2006 child abuse incident. The immigration judge also considered: Petitioner's November 2001 arrest on charges of child endangerment and public intoxication after she went door-to-door in an apartment complex holding her daughter while intoxicated, and Petitioner's mother told police that Petitioner is "constantly drunk, every day, and does not care properly for her children"; Petitioner's subsequent violation of parole when she was found drinking in a park; Petitioner's own testimony that from 2004 to 2006 she became a "heavy drinker"; Petitioner's May 2007 arrest for public disturbance; and Petitioner's 2023 arrest which "also resulted due to her alcohol addiction—she admits to having relapsed and drunk heavily enough that she does not have any recollection of the events that took place which led to her conviction of false imprisonment." ECF No. 1-2 at pp. 186–87. Moreover, following Petitioner's November 2001 conviction, she was ordered to complete parenting classes and undergo treatment for alcohol abuse, but she admitted in her removal proceedings that she did not attend any parenting classes and only completed the first two of twelve steps outlined by Alcoholics Anonymous. *Id.* at p. 187. The immigration judge found that this evidence supported the conclusion that Petitioner "has not rehabilitated and has established a concerning pattern of criminality, including substance abuse, as well as negligent and dangerous behavior toward children who have been under her care." *Id.* at p. 187. Ultimately, the immigration judge concluded that, "considering [Petitioner's] numerous arrests and lengthy criminal history, which involved severe and permanent brain injury to an infant child, . . . [Petitioner] *poses* a danger to the community." *Id.* at p. 188 (emphasis added). The

immigration judge thus concluded that Petitioner currently poses a danger to the community, and this Court may not reweigh the evidence to reach a different conclusion. *Martinez*, 124 F.4th at 785; *Konou*, 750 F.3d at 1127.

**2. The immigration judge considered all the evidence when determining that Petitioner is a danger to the community.**

Petitioner argues that when determining her dangerousness, the immigration judge failed to consider all the evidence, including Petitioner's change in circumstances since her 2006 criminal offense, her recent, successful rehabilitation efforts, or her release plan. ECF No. 1 at ¶¶ 95–101. The Court should reject these arguments.

First, Petitioner argues that the immigration judge failed to consider that her 2006 criminal offense occurred when she was "trapped in a violent, abusive relationship and struggling with mental health conditions," and "[s]he was unable to be a caring, present mother." ECF No. 1 at ¶ 96. Now that her children are grown adults and she is not caring for them or any other children, she argues that "[t]here is thus no evidence that the same kind of harm is likely to occur again." *Id.* Petitioner's argument that the immigration judge ignored her changed circumstances is unsupported. Indeed, the immigration judge expressly "acknowledge[d] [Petitioner's] history of extensive trauma, including . . . numerous experiences as a victim of domestic violence in the United States," recognized the fact that her current husband "has never committed acts of domestic violence against her and has remained loving and supportive," and "also considered [Petitioner's] mental health issues, including PTSD, stemming from her traumatic past." ECF No. 1-2 at pp. 187–88. Nevertheless, the immigration judge found "these factors do not mitigate [Petitioner's] danger to the community." *Id.* at p. 187. The Court "cannot reweigh [the] evidence" already considered by the immigration judge. *Konou*, 750 F.3d at 1127. Moreover, even if Petitioner no longer provides care to her adult children, that does not mean there is no evidence that the "same kind of harm is likely to occur again." Petitioner's recent arrest and conviction for false imprisonment in 2023 did not involve her children. That conviction formed part of the immigration judge's conclusion that

Petitioner is a danger to the community, particularly because Petitioner had admittedly "drunk heavily enough that she does not have any recollection of the events that took place which led to her conviction of false imprisonment." ECF No. 1-2 at pp. 186–87. Petitioner's reliance on *Judulang v. Chertoff*, 562 F. Supp. 2d 1119 (S.D. Cal. 2008), is unpersuasive. In that case, the district court concluded that the immigration judge erroneously denied bond based on a finding that the petitioner posed a danger to the community because the petitioner's "only relevant conviction for violence is nearly 20 years old and no other evidence indicating dangerousness was put forward . . . ." *Judulang*, 562 F. Supp. 2d at 1127. Here, in contrast, the immigration judge relied not only on Petitioner's multiple arrests and/or convictions between 2001 and 2007, but also Petitioner's recent conviction in 2023—which demonstrated that Petitioner's prior efforts to address her ongoing alcohol addiction had been unsuccessful.

Second, Petitioner argues that the immigration judge failed to consider Petitioner's "recent, successful rehabilitation efforts," including psychotherapy for her substance abuse disorder that she began in February 2024. ECF No. 1 at ¶¶ 97–98. But the Ninth Circuit is clear that immigration judges and the BIA are not required to "discuss each piece of evidence submitted." *Cole*, 659 F.3d at 771; *see also Martinez*, 124 F.4th at 785. While the immigration judge did not expressly mention Petitioner's weekly counseling sessions which commenced in February 2024, the immigration judge explained that Petitioner's prior efforts at addressing her alcohol addiction—including partial completion of an Alcoholics Anonymous program—had been insufficient to prevent her 2023 relapse and subsequent conviction for false imprisonment. ECF No. 1-2 at p. 188. The immigration judge also accurately noted that Petitioner did not seek rehabilitative assistance through the Gospel Center Rescue Mission's substance abuse treatment program until after ICE re-detained Petitioner. *Id.* The immigration judge clearly explained that "Petitioner has had ample time to address her alcohol addiction," which Petitioner admits began as early as 2003. *Id.*

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**C. The Immigration Judge's Denial of Bond Based on Flight Risk Was Not Legally Erroneous, Arbitrary, or an Abuse of Discretion.**

Petitioner argues that the immigration judge's conclusion that Petitioner poses a flight risk was erroneous because the immigration judge arbitrarily dismissed Petitioner's prior compliance with ICE check-ins, failed to consider evidence of Petitioner's support in finding permanent housing, violated anti-discrimination law, and failed to consider whether any amount of bond or conditions would mitigate any flight risk. ECF No. 1 at ¶¶ 102–114. The Court should reject these arguments.

**1. The immigration judge did not arbitrarily dismiss Petitioner's prior compliance with ICE check-ins or Petitioner's support in finding permanent housing.**

Petitioner argues that the immigration judge arbitrarily and erroneously disregarded her prior compliance with ICE check-ins and failed to consider evidence regarding her support in seeking permanent housing. ECF No. 1 at ¶¶ 103–08. Respondents dispute these assertions. The immigration judge's analysis as to flight risk acknowledged Petitioner's prior attendance at ICE check-ins and evidence regarding housing assistance, but nevertheless found that her lack of housing, mental health issues, and alcohol addiction created a "precarious" situation resulting in Petitioner being deemed a flight risk:

> Given the applicant's lack of housing, mental health issues, and problems with alcohol addiction, the Court finds in the alternative, that the applicant poses an extreme risk of flight. The Court acknowledges that the applicant previously attended her mandated ICE check-ins, however given the precariousness of the applicant's situation this does not sufficiently assuage the Court's concern, and the Court is not convinced that the applicant will attend future hearings. While the applicant's sister and husband have offered to provide transportation and general support to the applicant and the applicant submitted evidence of programs and services that could assist her in finding housing and in navigating her legal proceedings, the Court notes that these factors were all present throughout the applicant's lengthy history in the United States, and she has not been successful in her efforts at maintaining stable and consistent housing and

> sobriety. [Citation.] Therefore, the Court finds in the alternative, that the applicant poses an extreme risk of flight.

ECF No. 1-2 at p. 188.

Respondents acknowledge that the immigration judge could have provided a more thorough analysis of flight risk, but Respondents maintain that the analysis was sufficient to find, by clear and convincing evidence, that Petitioner poses a flight risk. Moreover, even if the Court disagrees, habeas relief is improper because the immigration judge properly found, in the alternative, that Petitioner is a danger to the community, as discussed above.

**2. The government did not violate anti-discrimination laws.**

Petitioner contends that the immigration judge and BIA's reliance on Petitioner's mental health conditions as a basis to find her a flight risk was arbitrary and discriminatory. Petitioner offers no authority for her contention that immigration judges and the BIA may not consider an alien's mental health condition as a factor in deciding when bond is appropriate. The argument runs counter to Supreme Court precedent. In *Zadvydas*, the Supreme Court acknowledged, in the context of a dangerousness determination, that when preventive detention is potentially indefinite, the Supreme Court has "demanded that the dangerousness rationale must also be accompanied by some other special circumstance, *such as mental illness*, that helps to create the danger." 533 U.S. at 691 (citing *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997)) (emphasis added); *see also id.* at 690 (non-punitive detention does not violate the Fifth Amendment "where a special justification, such as harm-threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'") (quoting *Hendricks*, 521 U.S. at 356); 8 C.F.R. § 241.4(f)(3) (listing factors for consideration whether a detainee should be released, including "psychiatric and psychological reports pertaining to the detainee's mental health").

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**3. Due process did not require the immigration judge to consider whether any amount of bond or conditions would mitigate Petitioner's flight risk.**

Petitioner argues that the immigration judge was required "to consider whether any amount of bond to alternative conditions of release would mitigate . . . concerns" about flight risk. ECF No. 1 at ¶ 114. To support this argument, Petitioner relies on the Ninth Circuit's decision in *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017). This reliance is misplaced. In *Hernandez*, the Ninth Circuit held that when an individual has "been determined to be neither dangerous nor so great a flight risk as to require detention without bond," the individual's financial circumstances and possible alternative release conditions must be considered "to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring their appearance at future hearings[.]" *Id.* at 990–91. The Ninth Circuit did not hold in *Hernandez* that such considerations must be considered when an individual—such as Petitioner—has been determined to be a danger to the community or a flight risk. Indeed, the Ninth Circuit later confirmed in *Martinez* that *Hernandez* does not apply to situations, like here, where the individual has been determined to be a danger to the community or a flight risk:

> Relying on *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), Martinez argues that conditions of release must be considered to ensure that detention is reasonably related to the government's interest in protecting the public. That case is inapplicable here. In *Hernandez*, the plaintiff aliens complained that neither their financial circumstances nor alternative release conditions were considered before their bond decisions were made, even though they were determined not to be dangerous or flight risks. 872 F.3d at 984-85, 990-91. While the government had a legitimate interest in protecting the public and ensuring appearances in immigration proceedings, we held that detaining an indigent alien without consideration of financial circumstances and alternative release conditions was "unlikely to result" in a bond determination "reasonably related to the government's legitimate interests." *Id.* at 991. The analysis is different here. *Cf. id.* at 994 (relying on absence of dangerousness or flight-risk determination in procedural due process analysis). Martinez was found to be a danger to the

> community, so his detention is clearly "reasonably related" to the government's interest in protecting the public. *See id.* at 991.

*Martinez*, 124 F.4th at 786; *see also Abduraimov v. Andrews*, No. 1:25-cv-00843-EPG-HC, 2025 WL 2912307, at *3 (E.D. Cal. Oct. 14, 2025) (holding that the immigration judge need consider financial circumstances or alternative conditions of release only "[i]n the event Petitioner is determined not to be a danger to the community and not so great a flight risk as to require detention without bond"); *Loba L.M. v. Andrews*, No. 1:25-cv-00611-JLT-SAB-HC, 225 WL 2939178, at *9 (E.D. Cal. Oct. 16, 2025) (same); *Maksim v. Warden, Golden State Annex*, No. 1:25-cv-00955-SKO (HC), 2025 WL 2879328, at *6 (E.D. Cal. Oct. 9, 2025) (same); *Doe v. Andrews*, No. 1:25-cv-00506-SAB-HC, 2025 WL 2590392, at *9 (E.D. Cal. Oct. 9, 2025) (same).

**D. The BIA Did Not Engage in Biased Decision-Making.**

Finally, Petitioner argues that the BIA violated due process by failing to engage in unbiased decision-making. ECF No. 1 at ¶¶ 115–121. This argument is unpersuasive.

Even if Petitioner is correct when stating that "[e]ither all or nearly all of these [BIA] decisions found against the noncitizen" (ECF No. 1 at ¶ 119), mere statistics tell us nothing. Petitioner's argument implies that these BIA decisions were wrongly decided. But Petitioner makes no effort to explain how any of the cited BIA decisions, let alone "all or nearly all of them," were wrongly decided or otherwise evidence a bias against aliens in immigration proceedings. Without more, Petitioner's suggestion that BIA precedent decisions since January 20, 2025, are biased does not support her argument any more than if Respondents argued that the BIA's pro-alien precedent decisions in 2024 were the product of biased decision-making going the other way.

More importantly, however, even if some contextual bias could be inferred from the outcomes in these past BIA decisions, they do not establish that any bias occurred *in this case*. As discussed above, the immigration judge properly concluded that Petitioner is a danger to the community and a flight risk. Those conclusions were based not on any bias, but rather on Petitioner's lengthy (and recent) criminal history, lack of

housing, mental health issues, and alcohol addiction and abuse.

## V. CONCLUSION

Based on the foregoing, Respondents respectfully request that the Court dismiss Petitioner's habeas petition. In the event the Court is inclined to award any relief to Petitioner, such relief should be limited to a new bond hearing rather than release from custody.

DATED: October 24, 2025

Respectfully submitted,

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