

1 MARTIN O'HARA (SBN 313973)
2 5155 Rosecrans Ave., Suite 250
3 Hawthorne, CA 90250
4 Tel: (213) 265-7348
5 Fax: (213) 289-2940
6 Email: Martin@Martinoharalaw.com

7 *Attorney for Petitioner*

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 PARDEEP SHARMA
11 aka PARDEEP SINGH

12 *Petitioner,*

Case No.: 26-cv-00513-BAS-SBC

13 v.

14 JEREMY CASEY, Warden, Imperial
15 Regional Detention Facility, et al.,

16 *Respondents.*

**PETITIONER'S TRAVERSE TO
RESPONDENTS' RETURN TO
HABEAS PETITION AND REPLY
IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER**

I. INTRODUCTION

Petitioner, Pardeep Sharma (aka Pardeep Singh), by and through undersigned counsel, hereby submits this Traverse to Respondents' Return to Habeas Petition and Reply in Support of Motion for Temporary Restraining Order (TRO). The absence of any rebuttal in this Traverse is not a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus and other filings made in this matter previously.

This Traverse addresses several issues raised in Respondents' Return to the Habeas Petition and Opposition to the Motion for a TRO. First, Respondents' exhaustion argument fails because exhaustion is prudential in § 2241 habeas proceedings and should be waived where administrative remedies are futile, inadequate, or would perpetuate ongoing constitutional injury, particularly in a post-habeas posture where the Government has already failed to provide a constitutionally adequate remedial hearing. Second, 8 U.S.C. § 1226(e) does not bar this Court's review of the constitutional adequacy of the post-habeas bond hearing or the Government's compliance with this Court's prior habeas order. Third, the post-habeas bond hearing failed to cure the due process violation because the Immigration Judge misallocated the burden of proof, relied on adverse credibility findings untethered to evidence of danger or flight risk, failed to consider less restrictive alternatives to detention, and the Government failed to carry its burden of justifying continued detention by clear and convincing evidence. Finally, because the Government failed to cure the constitutional

1 violation after this Court ordered a remedial hearing, habeas relief must be meaningful, and
2 the TRO factors are satisfied.

3 4 II. ARGUMENT

5 6 A. Prudential Exhaustion Should Be Waived Because BIA Review Is 7 Inefficacious, Futile, and Would Perpetuate Ongoing Constitutional Injury.

8 Respondents' exhaustion argument fails because exhaustion in § 2241 immigration habeas is
9 prudential and may be waived where "administrative remedies are inadequate or not efficacious,"
10 "pursuit of administrative remedies would be a futile gesture," or "irreparable injury will result." *Laing*
11 *v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Courts in this Circuit likewise recognize that prudential
12 exhaustion may be waived where agency review is ineffective or futile. See, e.g., *Acevedo-Carranza v.*
13 *Ashcroft*, 371 F.3d 539, 541–42 (9th Cir. 2004); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003
14 (N.D. Cal. 2018). This Court should waive exhaustion for at least three independent reasons.

15 16 I. *Exhaustion Is Futile Because the Agency Has Already Failed to Provide* 17 *the Constitutionally Required Cure Ordered by This Court*

18 This case is not a routine challenge to an IJ's discretionary weighing of bond
19 factors. Petitioner previously obtained habeas relief from this Court, which ordered the
20 Government to provide a constitutionally adequate custody hearing. For the reasons set
21 forth herein and in prior filings, the subsequent post-habeas bond hearing failed to cure
22 the due process violations identified by this Court. In this posture, requiring further
23 administrative exhaustion would amount to an endless loop of remands without a
24 meaningful cure, rendering habeas relief illusory. Where the agency has already failed to
25 comply with a court-ordered remedial process, further exhaustion is a "futile gesture"
26
27
28

1 within the meaning of *Laing*. 370 F.3d at 1000–01.

2 **2. *Administrative Remedies Are Inadequate or Not Efficacious Because the***
3 ***BIA Lacks Authority to Enforce This Court’s Habeas Order or Provide***
4 ***Equitable Habeas Relief***

5 BIA review of custody determinations is limited and deferential and does not
6
7 encompass enforcement of a federal district court’s habeas order or the provision of
8 equitable habeas relief. Habeas corpus is the vehicle for challenging unlawful custody
9 and for securing release where constitutional violations persist, as is the case here. *See*
10 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). The Ninth Circuit has recognized the
11 district court’s role in ensuring the constitutional adequacy of custody proceedings. *Singh*
12 *v. Holder*, 638 F.3d 1196, 1205–06 (9th Cir. 2011); *Hernandez v. Sessions*, 872 F.3d 976,
13 990–92 (9th Cir. 2017). Because the BIA cannot enforce this Court’s habeas mandate or
14 provide the equitable relief sought for the Government’s failure to cure a constitutional
15 violation, further administrative review is not an efficacious remedy under *Laing*. 370
16 F.3d at 1000–01.
17

18
19
20
21 **3. *Exhaustion Is Futile and Ineffective Because EOIR’s Institutional***
22 ***Transformation Precludes Impartial Adjudication***

23 Recent, publicly documented actions by EOIR leadership and DOJ demonstrate
24 institutional constraints on neutral adjudication that bear directly on the futility of further
25 administrative review in a post-habeas posture. EOIR has issued policy guidance
26 cautioning immigration judges against becoming “adjudicatory outliers” at risk of “close
27
28

1 examination and potential action”¹, and subjecting judges to heightened scrutiny for
2 decisions perceived as unfavorable to DHS. In parallel, DOJ authorized the designation
3 of large numbers of temporary immigration judges and removed prior experience
4 requirements. See *Designation of Temporary Immigration Judges*, 90 Fed. Reg. 41,883
5 (Aug. 28, 2025). These measures provide relevant institutional context when assessing
6 whether post-habeas custody proceedings can be presumed to provide neutral,
7 constitutionally adequate process.
8

9
10
11 More critically, district courts have found that EOIR leadership instructed
12 immigration judges to continue applying BIA precedent notwithstanding district court
13 rulings recognizing bond-hearing rights. In *Maldonado-Bautista v. Santacruz*, No. 5:25-
14 cv-01873 (C.D. Cal. Nov. 20 & 25, 2025), the court entered final judgment recognizing
15 bond eligibility. Notwithstanding that judgment, EOIR leadership issued guidance to
16 immigration judges directing continued adherence to BIA authority. Subsequently, the
17 court found that Respondents continued to rely on legal interpretations “expressly found
18 unlawful” and were “manufactur[ing] arguments for sake of opposition” in the face of
19 final district court judgments. *Palomera Baltazar v. Janecka*, No. 5:26-cv-00019 (C.D.
20 Cal. Jan. 16, 2026). Where EOIR leadership has instructed immigration judges to
21 disregard district court custody rulings, further exhaustion before the same adjudicatory
22
23
24
25
26
27

28 ¹ 27 Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf.

1 system is not an efficacious remedy for curing constitutional defects identified by a
2 federal court.

3
4 **4. *The Recent Purge and Reconstitution of EOIR Adjudicators, Including***
5 ***the BIA, Further Underscore the Futility of Administrative Exhaustion in***
6 ***This Post-Habeas Posture***

7 The recent purge and reconstitution of EOIR adjudicators, including the Board of
8 Immigration Appeals, further underscore the futility of administrative exhaustion here.
9 As of September 26, 2025, the administration has terminated 128 immigration judges
10 (“IJs”).² Former New York IJ David K.S. Kim explained the targeting criteria: “I do not
11 know the exact reason for my termination, but most of those dismissed, including myself,
12 were judges with high asylum approval rates.”³ These statements come from career
13 jurists with decades of combined experience in EOIR, who publicly described pressure
14 undermining neutral adjudication.
15

16
17
18 A parallel purge occurred at the BIA which was reduced from 28 members to 15
19 members. All Biden appointees on the BIA were fired.⁴ The statistical impact is stark. As
20 of January 22, 2026, the reconstituted BIA has issued 71 published decisions.⁵ Of those,
21
22
23

24 ² *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025),
25 <https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-responds>

26 ³ Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025),
27 <https://www.donga.com/en/article/all/20250920/5859412/1>

28 ⁴ Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025),
<https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/>

⁵ Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep’t of Just. (Jan. 21, 2025),
<https://www.justice.gov/eoir/volume-29>.

1 69 decisions (97%) favored the administration.⁶ By contrast, during the entire four-year
2 span of the prior administration, the BIA issued 76 published decisions.⁷ Of those, 46
3 decisions (60%) favored the administration. The transformation from 60% to 97% pro-
4 government outcomes—achieved through wholesale termination of one administration's
5 appointees —speaks for itself. Petitioner acknowledges that while statistical trends alone
6 do not establish bias in any individual case, they provide relevant institutional context in
7 evaluating whether BIA review in a post-habeas posture is likely to provide meaningful
8 relief for constitutional defects in custody adjudication. In light of this institutional
9 reconstitution, requiring exhaustion before the BIA after the agency has already failed to
10 comply with a federal habeas order is not an efficacious remedy.

11
12
13
14
15 **5. *Requiring Exhaustion Would Perpetuate Ongoing Constitutional Injury***

16 Finally, even apart from futility and ineffectiveness, prudential exhaustion should
17 be waived because requiring further administrative review would perpetuate an ongoing
18 deprivation of liberty following a constitutionally defective post-habeas custody
19 proceeding. Continued unlawful detention constitutes irreparable injury, an independent
20 basis to waive prudential exhaustion. *Laing*, 370 F.3d at 1000–01. Forcing Petitioner to
21 remain detained while pursuing an administrative appeal that cannot enforce this Court's
22
23
24
25

26
27 ⁶ Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>. [Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration].

28 ⁷ Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021)

1 habeas mandate would unjustly prolong the constitutional injury habeas is designed to
2 remedy.
3

4 **B. Section 1226(e) Does Not Bar Review of the Constitutional Adequacy of the**
5 **Post-Habeas Bond Hearing**

6 Respondents argue that 8 U.S.C. § 1226(e) strips this Court of authority to review
7 the Immigration Judge's custody determination. That contention mischaracterizes both
8 the scope of § 1226(e) and the nature of Petitioner's claims. Section 1226(e) bars judicial
9 review of the Attorney General's "discretionary judgment regarding the application" of §
10 1226 and the "decision or action" to detain or release a noncitizen. It does not preclude
11 federal courts from reviewing constitutional and legal defects in custody proceedings.
12 Nor does it bar review of whether the Government complied with a district court's prior
13 habeas order requiring a constitutionally adequate custody hearing.
14
15
16

17 The Ninth Circuit has repeatedly held that § 1226(e) does not foreclose habeas
18 review of constitutional challenges to the procedures employed in custody
19 determinations. In *Singh v. Holder*, the court explained that while § 1226(e) precludes
20 review of "discretionary determinations," it does not bar review of "questions of law and
21 constitutional claims" concerning the adequacy of bond hearing procedures. 638 F.3d
22 1196, 1203–05 (9th Cir. 2011). Likewise, in *Hernandez v. Sessions*, the Ninth Circuit
23 held that district courts retain jurisdiction to review whether detention procedures satisfy
24 due process, including whether the Government bears the burden of proof and whether
25
26
27
28

1 less restrictive alternatives to detention are considered. 872 F.3d 976, 990–92 (9th Cir.
2 2017).

3
4 More recently, the Ninth Circuit reaffirmed that federal courts may review the
5 constitutional adequacy of custody hearings ordered to cure due process violations,
6 notwithstanding § 1226(e). See *Martinez v. Clark*, 124 F.4th 775, 783–86 (9th Cir. 2024)
7 (recognizing the district court’s authority to require and review constitutionally adequate
8 bond hearing procedures as a remedy for unlawful detention). Unlike *Leonardo* and
9 *Baker v. Gordon*, this case does not seek premature review of an initial IJ bond denial,
10 but rather challenges the Government’s failure to provide a constitutionally adequate
11 post-habeas remedial hearing ordered by this Court.
12
13
14

15 These cases reflect a settled distinction that courts may not reweigh the
16 discretionary factors underlying an IJ’s custody decision, but they may review whether
17 the process employed comports with constitutional requirements.
18

19 That distinction is dispositive here. Petitioner is not solely asking this Court to
20 substitute its judgment for the Immigration Judge’s discretionary weighing of danger or
21 flight risk. Nor does Petitioner simply seek review of the “correctness” of the IJ’s
22 ultimate custody outcome. Rather, Petitioner primarily challenges the constitutional
23 adequacy of the post-habeas bond hearing itself, including whether the hearing complied
24 with the procedural safeguards required by due process after this Court ordered a
25 remedial custody hearing. Where, as here, a district court has already intervened to
26
27
28

1 require a constitutionally adequate hearing, § 1226(e) cannot be invoked to insulate the
2 Government from judicial review of its compliance with that order.
3

4 The Supreme Court's decisions confirm this understanding. In *Jennings v.*
5 *Rodriguez*, the Court recognized that § 1226(e) does not bar constitutional challenges to
6 the detention scheme or to the adequacy of custody procedures. 583 U.S. 281, 304–05
7 (2018). And in *Zadvydas v. Davis*, the Court emphasized that habeas courts retain
8 authority to review the constitutionality of immigration detention practices. 533 U.S. 678,
9 688–90 (2001). Section 1226(e) therefore cannot be read to foreclose judicial oversight of
10 whether a court-ordered remedial custody hearing actually satisfied due process.
11
12

13 Respondents' contrary framing attempts to collapse Petitioner's constitutional
14 challenge into an impermissible request for review of a discretionary custody
15 determination. That is incorrect. The gravamen of Petitioner's claim is that the
16 Government failed to provide the constitutionally required process after this Court
17 ordered a curative bond hearing. Because § 1226(e) does not bar review of constitutional
18 claims or legal errors in custody proceedings, this Court has jurisdiction to review
19 whether the post-habeas bond hearing satisfied due process and to provide meaningful
20 habeas relief where it did not.
21
22
23
24

25
26 **C. The Post-Habeas Bond Hearing Failed to Cure the Due Process Violation**

27
28 **1. *The Immigration Judge Misallocated the Burden of Proof in a Court-Ordered Remedial Bond Hearing Following Re-Detention of Petitioner***

1 Respondents contend that the Immigration Judge (“IJ”) correctly placed the burden
2 on Petitioner to establish that he is not a danger to the community and not a flight risk.
3 That argument relies on regulatory standards governing initial § 1226(a) custody
4 determinations and ignores the fundamentally different posture of this case. This was not
5 an initial bond hearing; it was a court-ordered remedial hearing designed to cure an
6 established due process violation. In that posture, the Constitution, not default regulatory
7 practice, governs the allocation of the burden of proof.
8
9
10

11 The Ninth Circuit has held that when a bond hearing is required to satisfy due
12 process, the Government bears the burden to justify continued detention by clear and
13 convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (holding
14 that due process requires the Government to bear the burden of proof at a constitutionally
15 required custody hearing). More recently, the Ninth Circuit reaffirmed that district courts
16 may order bond hearings with specific procedural safeguards, including proper allocation
17 of the burden of proof, to remedy unlawful detention. *Martinez v. Clark*, 124 F.4th 775,
18 783–86 (9th Cir. 2024). Significantly, where DHS initiates re-detention after initial
19 release on OREC, as is the case with this Petitioner, it is the government’s burden to
20 justify the renewed deprivation of liberty. *J.E.H.G. v. Chestnut*, 2025 WL 3523108, at
21 *14 (E.D. Cal. Dec. 9, 2025) (explaining that where DHS initiates re-detention, it must
22 justify the renewed deprivation of liberty). These cases reflect that once detention has
23 crossed the constitutional threshold requiring judicial intervention, the Government must
24
25
26
27
28

1 affirmatively justify continued detention; the detainee need not prove entitlement to
2 liberty.

3
4 Respondents' reliance on cases such as *Rodriguez Diaz v. Garland* (addressing the
5 default burden allocation at routine § 1226(a) bond hearings) is misplaced. Those
6 decisions concern the regulatory framework governing initial, discretionary custody
7 determinations in ordinary removal proceedings. They do not govern the procedural
8 requirements of a court-ordered remedial hearing convened to cure a due process
9 violation arising from re-detention without any justification, where no violation of the
10 original terms of release is alleged. Where a federal court has ordered a custody hearing
11 to remedy unconstitutional detention (or in this case, re-detention), the hearing must
12 satisfy constitutional minimums, including placing the burden on the Government to
13 justify continued detention by clear and convincing evidence. *Singh*, 638 F.3d at 1203–
14 05.

15
16 Here, the IJ expressly required Petitioner to carry the burden of proving that he was
17 not a danger or flight risk, rather than requiring the Government to justify continued
18 detention. This misallocation of the burden of proof was not a harmless procedural quirk;
19 it infected the entire analysis by starting from an unconstitutional presumption in favor of
20 detention. Because the post-habeas bond hearing failed to apply the constitutionally
21 required burden of proof, it did not cure the due process violation identified by this Court.
22 The Government therefore cannot rely on that defective hearing to defeat habeas relief.
23
24
25
26
27
28

1 **2. *The Immigration Judge Improperly Relied on Adverse Credibility***
2 ***Findings Untethered to Evidence of Danger or Flight Risk***
3

4 Respondents argue that the Immigration Judge’s adverse credibility findings
5 independently justify continued detention. That position conflates credibility assessments
6 made in the context of *removal proceedings* with the distinct constitutional inquiry
7 required at a *custody hearing*: whether the Government has established, by clear and
8 convincing evidence, that continued detention is necessary to address danger to the
9 community or risk of flight. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011).
10
11

12 An IJ may not substitute generalized credibility concerns for evidence of
13 dangerousness or flight risk. Due process requires an individualized determination based
14 on relevant, reliable evidence bearing on the specific custody factors at issue. See
15 *Hernandez v. Sessions*, 872 F.3d 976, 991–92 (9th Cir. 2017) (custody hearings must
16 include individualized consideration of danger and flight risk). Credibility findings
17 divorced from concrete evidence of risk do not satisfy that standard.
18
19

20 Here, the IJ’s adverse credibility assessment rested on perceived inconsistencies in
21 Petitioner’s testimony regarding future employment and compliance with regulatory
22 requirements, which are matters collateral to the core custody inquiry. Even accepting
23 those credibility concerns *arguendo*, they do not constitute clear and convincing evidence
24 that Petitioner poses a danger to the community or a risk of flight. The Government
25 presented no evidence of criminal history, prior failures to appear, or violations of release
26
27
28

1 conditions. To the contrary, the record reflects prior compliance with supervision and the
2 availability of stable housing, employment upon release and viable forms of relief from
3 removal. The IJ's reliance on generalized credibility doubts to justify detention therefore
4 impermissibly collapsed the custody inquiry into a character assessment, rather than the
5 constitutionally required evaluation of actual risk.
6
7

8 Moreover, reliance on credibility in this manner is especially problematic in a
9 court-ordered remedial hearing, where the purpose of the proceeding is to provide a
10 constitutionally adequate cure for prior unlawful detention. Allowing detention to turn on
11 subjective credibility assessments untethered to concrete risk factors reintroduces the
12 very arbitrariness due process is meant to prevent. Because the IJ relied on adverse
13 credibility findings that were not probative of danger or flight risk, the post-habeas bond
14 hearing failed to cure the due process violation and cannot support continued detention.
15
16
17

18 **3. *The Immigration Judge Failed to Consider Less Restrictive Alternatives to***
19 ***Detention***

20 Due process requires that custody determinations be individualized and that the
21 adjudicator consider whether less restrictive alternatives to detention would reasonably
22 mitigate any identified risk of danger or flight. *Hernandez v. Sessions*, 872 F.3d 976,
23 991–92 (9th Cir. 2017). This requirement is especially salient in a court-ordered remedial
24 bond hearing, where the purpose of the proceeding is to cure an established due process
25 violation and to ensure that continued detention is truly necessary.
26
27
28

1 Respondents contend that consideration of alternatives is unnecessary once an IJ
2 concludes that a noncitizen poses a danger or *so great* a flight risk as to require detention
3 without bond. That argument misconstrues *Hernandez* and the constitutional framework
4 governing custody hearings. The question is not whether detention is permissible in the
5 abstract, but whether detention is necessary to serve the Government's interests when less
6 restrictive means are available. See *Hernandez*, 872 F.3d at 991–92 (requiring
7 consideration of alternatives to detention as part of individualized custody
8 determinations). Even where some level of risk is identified, due process requires the
9 adjudicator to consider whether conditions such as bond, reporting requirements,
10 electronic monitoring, or other supervision could reasonably mitigate that risk.
11

12 Here, the IJ did not meaningfully engage with less restrictive alternatives, despite
13 the availability of concrete, less restrictive options, including stable housing, community
14 ties, employment upon release, viable avenues of immigration relief and the availability
15 of supervision conditions. These all demonstrate that Petitioner does not pose *so great a*
16 *flight risk* as to require detention without bond. The IJ's failure to consider these
17 alternatives, in light of the substantial evidence mitigating any risk of flight, rendered the
18 custody determination constitutionally deficient. In a post-habeas posture, where this
19 Court ordered a remedial hearing to ensure compliance with due process, the failure to
20 consider less restrictive alternatives demonstrates that the Government did not provide
21 the constitutionally required cure.
22
23
24
25
26
27
28

1 Moreover, the Government's position would collapse the due process inquiry into
2 a binary determination—detain or release—without regard to whether detention is
3 actually necessary in light of available alternatives and the evidence mitigating perceived
4 flight risk concerns. That approach is inconsistent with the fundamental principle that
5 detention is the exception, not the rule, and must be justified by a showing that no less
6 restrictive means can reasonably address the Government's legitimate interests. Because
7 the IJ failed to consider less restrictive alternatives to detention, the post-habeas bond
8 hearing did not cure the due process violation.

9
10
11
12 **4. *The Government Failed to Carry Its Burden of Establishing Danger or***
13 ***Flight Risk by Clear and Convincing Evidence***

14 Even apart from the procedural defects in the post-habeas bond hearing, the
15 Government failed to carry *its* burden of establishing by clear and convincing evidence
16 that Petitioner's continued detention is necessary to address danger to the community or
17 risk of flight. Where detention is constitutionally constrained, the Government must
18 justify continued custody with concrete, individualized evidence, not speculation or
19 conjecture. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011); *Hernandez v.*
20 *Sessions*, 872 F.3d 976, 990–92 (9th Cir. 2017).

21
22
23
24 Here, the Government offered no evidence of violent criminal history, no prior
25 failures to appear, and no violations of prior release conditions. To the contrary, the
26 record reflects Petitioner's longstanding ties to the community, stable housing, a concrete
27 employment offer upon release, and pending applications for asylum and U-visa. These
28

1 factors weigh strongly against any finding of flight risk. Nor did the Government present
2 evidence demonstrating that Petitioner poses a danger to the community. The IJ's
3 reliance on speculative inferences and generalized credibility concerns does not satisfy
4 the Government's burden to establish danger or flight risk by clear and convincing
5 evidence, not speculation or conjecture.
6
7

8 In a court-ordered remedial hearing, the Government's failure to present
9 affirmative evidence justifying continued detention is dispositive. Due process does not
10 permit continued deprivation of liberty based on conjecture or on the mere absence of
11 proof negating risk. Because the Government failed to carry its burden of proof, the post-
12 habeas bond hearing failed to cure the constitutional violation and cannot justify
13 continued detention.
14
15

16 **5. *The Post-Habeas Bond Hearing Did Not Cure the Constitutional Violation***
17

18 The post-habeas bond hearing failed to provide the constitutionally required cure
19 for Petitioner's unlawful detention. The Immigration Judge misallocated the burden of
20 proof in a court-ordered remedial hearing, relied on adverse credibility findings
21 untethered to evidence of danger or flight risk, failed to consider less restrictive
22 alternatives to detention, and the Government failed to carry its burden of establishing
23 danger or flight risk by clear and convincing evidence. Each defect independently
24 undermines the constitutional adequacy of the hearing; collectively, they demonstrate that
25
26
27
28

1 the proceeding reproduced, rather than cured, the due process violation this Court
2 previously identified.
3

4 Where a district court orders a custody hearing to remedy unconstitutional re-
5 detention, the Government bears the obligation to provide a meaningful, constitutionally
6 adequate proceeding. A hearing that departs from constitutional minimums does not
7 satisfy that obligation and cannot be relied upon to justify continued detention. Because
8 the post-habeas bond hearing failed to cure the due process violation, Petitioner remains
9 unlawfully detained, and habeas relief remains necessary.
10
11

12 **D. Where the Government Fails to Cure a Due Process Violation After a Court-**
13 **Ordered Bond Hearing, the Proper Habeas Remedy Is Release (or, at**
14 **Minimum, Court-Supervised Relief)**

15 Habeas corpus is an equitable remedy designed to secure freedom from unlawful
16 custody. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Carafas v. LaVallee*, 391 U.S.
17 234, 238 (1968). Where the Government fails to cure a due process violation after a
18 court-ordered remedial custody hearing, ordering yet another remand to the same process
19 risks rendering habeas relief illusory. In such circumstances, the appropriate remedy is
20 release, subject to reasonable conditions if necessary to ensure appearance and public
21 safety.
22
23
24

25 Courts possess broad equitable authority to fashion meaningful habeas relief,
26 including ordering release where continued detention rests on constitutionally defective
27 procedures. Repeated remands following failed remedial hearings impose an
28

1 unacceptable risk of erroneous deprivation of liberty and undermine the core purpose of
2 habeas review. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (freedom from physical
3 restraint lies at the core of liberty protected by due process). Where, as here, the
4 Government has been afforded an opportunity to provide a constitutionally adequate
5 hearing and has failed to do so, further remand is neither necessary nor appropriate.
6
7

8 At minimum, if the Court declines to order immediate release, any further custody
9 proceeding should be subject to court-supervised procedural safeguards designed to
10 ensure compliance with constitutional requirements, including proper allocation of the
11 burden of proof to the Government, consideration of less restrictive alternatives, and a
12 decision grounded in evidence of actual danger or flight risk. However, given the
13 Government's failure to provide a constitutionally adequate cure after judicial
14 intervention, release is the only remedy that meaningfully vindicates Petitioner's due
15 process rights and the Court's habeas mandate.
16
17
18

19 **E. The TRO Factors Are Satisfied**
20

21 To obtain temporary injunctive relief, a petitioner must show (1) a likelihood of
22 success on the merits, (2) irreparable harm absent relief, (3) that the balance of equities
23 tips in his favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res.*
24 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where serious questions going to the merits are
25 raised and the balance of hardships tips sharply in the petitioner's favor, preliminary
26
27
28

1 relief is appropriate so long as irreparable harm and public interest are satisfied. *Alliance*
2 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011).
3

4 ***1. Likelihood of Success on the Merits***

5 Petitioner is likely to succeed on the merits for the reasons set forth above. This
6 case does not present a routine challenge to a discretionary bond denial. The Court
7 ordered a remedial bond hearing to cure unconstitutional detention (in this case re-
8 detention after release on recognizance and no violations of the terms of release), and the
9 Government failed to provide a constitutionally adequate hearing. The post-habeas bond
10 hearing misallocated the burden of proof, relied on adverse credibility findings untethered
11 to evidence of danger or flight risk, failed to consider less restrictive alternatives to
12 detention, and the Government failed to carry its burden of establishing danger or flight
13 risk by clear and convincing evidence. Section 1226(e) does not bar review of these
14 constitutional defects. Because the remedial hearing failed to cure the due process
15 violation, Petitioner remains unlawfully detained. These facts establish, at minimum,
16 serious questions going to the merits and, more likely, a strong likelihood of success.
17
18
19
20
21

22 ***2. Irreparable Harm***

23 Continued detention pursuant to constitutionally defective procedures constitutes
24 irreparable harm. The loss of physical liberty is a paradigmatic irreparable injury that
25 cannot be remedied by later relief. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
26 (freedom from physical restraint lies at the core of the liberty protected by the Due
27
28

1 Process Clause). Each additional day of unlawful detention compounds the constitutional
2 injury. Moreover, continued detention impairs Petitioner's ability to consult with counsel,
3 prepare his case, and access family and community support, all harms that cannot be fully
4 remedied after the fact. DHS's assertion that civil detention does not constitute
5 irreparable harm is inconsistent with settled due process principles and the remedial
6 purpose of habeas corpus.
7
8

9
10 **3. Balance of Equities**

11 The balance of equities tips sharply in Petitioner's favor. Petitioner faces ongoing
12 deprivation of liberty based on a constitutionally defective post-habeas hearing. By
13 contrast, the Government faces minimal burden from Petitioner's release under
14 reasonable conditions, particularly where less restrictive alternatives to detention are
15 available and Petitioner has demonstrated community ties and the ability to comply with
16 conditions of supervision. The Government's interest in ensuring appearance and public
17 safety can be adequately protected through conditions short of detention. The equities
18 therefore favor immediate injunctive relief.
19
20
21

22 **4. Public Interest**

23 The public interest is served by ensuring that executive detention complies with the
24 Constitution and that judicial orders are given meaningful effect. Respect for the rule of
25 law and the integrity of habeas corpus review weighs strongly in favor of relief where a
26 court-ordered remedial process has failed to cure constitutional defects. The public also
27
28

1 has an interest in the fair and lawful administration of immigration detention and in
2 avoiding unnecessary and unlawful deprivation of liberty. Granting a TRO to halt
3 ongoing unconstitutional detention advances these interests.
4

5 III. CONCLUSION

6
7 For the foregoing reasons, the Court should grant the Petition for Writ of Habeas
8 Corpus and Petitioner's request for temporary injunctive relief. This case does not present
9 a routine challenge to a discretionary bond denial. The Court previously ordered a
10 remedial bond hearing to cure unconstitutional detention. The Government failed to
11 provide a constitutionally adequate post-habeas hearing. Prudential exhaustion is waived
12 because further administrative review would be futile and inadequate and would
13 perpetuate ongoing constitutional injury. Section 1226(e) does not bar review of the
14 constitutional adequacy of the post-habeas bond hearing. The post-habeas hearing
15 misallocated the burden of proof, relied on adverse credibility findings untethered to
16 evidence of danger or flight risk, failed to consider less restrictive alternatives to
17 detention, and the Government failed to carry its burden of establishing danger or flight
18 risk by clear and convincing evidence. The hearing therefore did not cure the due process
19 violation, and Petitioner remains unlawfully detained.
20
21
22
23
24

25 Accordingly, Petitioner respectfully requests that the Court:
26
27
28

- 1 1. Grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate
2 release from custody, subject to the conditions of release he was previously subject
3 to under OREC;
4
- 5 2. Grant temporary injunctive relief prohibiting Respondents from continuing to
6 detain Petitioner pursuant to the constitutionally defective post-habeas custody
7 determination;
8
- 9 3. In the alternative, if the Court declines to order immediate release, order a new
10 custody hearing within a specified, expedited timeframe before a different
11 Immigration Judge, with constitutionally required procedural safeguards,
12 including:
13
- 14 ○ placement of the burden of proof on the Government by clear and
15 convincing evidence;
 - 16 ○ consideration of less restrictive alternatives to detention; and
 - 17 ○ a decision grounded in evidence of actual danger or flight risk; and
- 18
19
20 4. Grant such other and further relief as the Court deems just and proper.
21

22 DATED: February 5, 2026

Respectfully submitted:

23 s/ Martin O'Hara, Esq.
24 Martin O'Hara, Esq.
25 Counsel for Petitioner
26 CA State Bar No. 313973
27 5155 Rosecrans Ave., Ste. 250
28 Hawthorne, CA 90250
Tel: (213) 265-7348
@: Martin@MartinOharaLaw.com