Kara Hartzler
Bar No. 293751
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Kara_hartzler@fd.org

Attorneys for Mr. Sandesh

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAWAN KUMAR SINGH,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-1425-JLS-BLM

Amended Petition for a Writ of Habeas Corpus

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

INTRODUCTION

This Court previously granted Pawan Kumar Singh's habeas petition. *See Singh v. Archambeault*, 25-cv-3720-JLS-DDL, Dkt. 8, Order (attached here at Exhibit A). In this previous petition, the Court held that Mr. Singh—who has legally lived and worked in the U.S. for 15 years in the tech industry, owns a home, has U.S. citizen children, and is eligible to become a lawful permanent resident—could not be denied a bond hearing on the basis that he was subject to expedited removal for a brief trip to Mexico. Specifically, this Court held that Mr. Singh should not be denied bond "on the basis that 8 U.S.C. § 1225(b)(1) requires mandatory detention." Exh. A at 7.

But at a subsequent bond hearing, an immigration judge denied Mr. Singh bond *solely* on the basis of this expedited removal order. The IJ did not consider any of Mr. Singh's individual circumstances—instead, the IJ claimed that the expedited removal order itself automatically rendered him a flight risk. *See* Exhibit B, Transcript of Bond Hearing, at 6. But the IJ never applied the nine factors required to determine whether an individual is a flight risk—all of which weighed in Mr. Singh's favor. Instead, the IJ simply stated, "I am going to find that the respondent, uh, is a significant flight risk, um, and that there's no amount of bond, uh, that would mitigate that risk. Um, and the Court is considering, uh, the expedited removal order." *Id.* at 6. Because the IJ's failure to apply the correct legal standard was fundamentally unfair and violated due process, this Court should order Mr. Singh immediately released.

STATEMENT OF FACTS

Pawan Kumar Singh was born in India and came to the United States on an H-1B visa in 2011 as a software engineer. Exhibit C, Declaration of Pawan Kumar Singh at ¶ 1. For many years, he worked as a functional analyst for Starbucks and other companies. *Id.* at ¶ 1. He filed an I-140 Immigrant Petition

1 for Alien Worker that would allow him to become a lawful permanent resident.
2 *Id.* at ¶ 4.
3 Mr. Singh owns a home in Phoenix, Arizona, where he lives with his wife
4 and U.S.-born daughter. *Id.* at ¶ 2. He has no criminal history. *Id.* at ¶ 2.
5 In the fall of 2025, Mr. Singh went to Mexico for a brief trip to explore
6 some real estate options. *Id.* at ¶ 3. While he was there, his wallet and passport
7 were stolen. *Id.* at ¶ 3.
8 Mr. Singh went to the Indian consulate to get a replacement passport so he
9 could reenter the United States. *Id.* at ¶ 4. However, the process was taking a long
10 time, so on November 5, 2025, he went to the U.S. port of entry with a copy of his
11 passport and his H-1B that was still valid until December 22, 2025. *Id.* at ¶ 4.
12 When Mr. Signh went to the port of entry, they told him that his visa had
13 been revoked in October 2025, which he was unaware of. *Id.* at ¶ 5. However, his
14 I-94 was still valid until December 5, 2025, and his H-1B visa stated that it was
15 still valid until December 8, 2025. *Id.* at ¶ 5. And even if his visa *had* been
16 revoked, he had a 60-day grace period in which to fix his status. *Id.* at ¶ 5.
17 The officer at the port of entry did not believe that Mr. Singh still had
18 lawful status. *Id.* at ¶ 6. He put Mr. Singh into expedited removal proceedings and
19 issued him an expedited removal order. *Id.* at ¶ 6. Mr. Singh has now been
20 detained at Otay Mesa for nearly five months. *Id.* at ¶ 6.
21 Mr. Singh filed a petition for a writ of habeas corpus, which this Court
22 granted on January 26, 2026. Exh. A at 7, *Singh v. Archambeault*, 25-cv-3720-
23 JLS-DDL. This Court held that 8 U.S.C. § 1225(b)(1)(A) "facially cannot apply to
24 Petitioner" because it "describes a noncitizen as one who has not been admitted or
25 paroled into the United States and who has not shown that the alien has been
26 physically present in the United States continuously for the 2-year period
27 immediately prior to the date of the determination of inadmissibility." Exh. A. at 6
28 (quotations and alterations omitted). By contrast, this Court held that Mr. Singh

has "resided in the United States for fifteen years, has had continuous employment authorization, approved employment-based immigration petitions, and has substantial familial connections in Arizona." *Id.* Thus, this Court held that he was "not subject to expedited removal under § 1225(b)" and ordered that the government provide him a bond hearing and that he not be denied bond "on the basis that 8 U.S.C. § 1225(b)(1) requires mandatory detention." *Id.* at 6–7.

On February 2, 2026, Mr. Singh had a bond hearing. *See* Exhibit B, Transcript of Bond Hearing. However, the IJ denied Mr. Singh bond on the sole basis that his expedited removal order under § 1225(b)(1) automatically made him a flight risk. *Id.* at 6. Nowhere in the IJ's decision did the IJ appear to consider Mr. Singh's long residence, ties to the United States, or other flight risk-related factors in the analysis. *See id.*

Mr. Singh has an immigration lawyer who is attempting to reopen his expedited removal order and pursuing his I-140 petition for lawful permanent residence. Exh. C at ¶ 9.

LEGAL BACKGROUND

I. The bond hearing Mr. Singh received was fundamentally unfair and violated the Due Process Clause of the Fifth Amendment.

In conducting the bond hearing this Court previously ordered Respondents to provide, the IJ did not apply the factors used to determine whether an individual is a flight risk. For instance, the IJ did not consider or weigh Mr. Singh's 15 years of lawful residence, his history of steady employment, his U.S. citizen-born child, or the fact that he owns a house. *See* Exh. B. Instead, the IJ found that Mr. Singh was a flight risk based solely on the fact that he was issued an expedited removal order. Exh. B at 6. This was not a constitutionally sufficient bond hearing.

The Ninth Circuit has held that "[t]o determine whether an alien is a danger to the community or a risk of flight, an IJ weighs nine factors under BIA precedent." *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024). These nine factors include:

(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.

Id.

Here, the IJ did not apply or appear to consider a *single one* of these factors, even though they all weighed in Mr. Singh's favor. Exh. B at 6. Instead, the IJ simply stated at the conclusion of the bond hearing, "I am going to find that the respondent, uh, is a significant flight risk, um, and that there's no amount of bond, uh, that would mitigate that risk. Um, and the Court is considering, uh, the expedited removal order." Exh. B at 6. This did not provide Mr. Singh a constitutionally adequate bond hearing because it held that an expedited removal order—which is *not* one of the *Martinez* factors—is the only thing an IJ should consider when determining flight risk.

At least two recent district courts have granted habeas relief on the basis that an IJ's failure to apply the correct legal standard violates due process. First, in *Miri v. Bondi*, a judge in the Central District of California reviewed a bond hearing for an asylum seeker from Iran who had lawfully entered on a visitor's

1 visa ten years earlier. No. 5:26-CV-00698-MEMF-MAR, 2026 WL 622302, at *1
2 (C.D. Cal. Mar. 5, 2026). The petitioner had a wife and minor child in the U.S.
3 and had "attended all scheduled interviews and appointments in connection with
4 his asylum application." *Id.* Nevertheless, the IJ's written memorandum denied
5 bond, stating only "the respondent failed to meet his burden to establish that he is
6 not a flight risk." *Id.* at *2. The IJ's verbal basis for finding flight risk during the
7 hearing was simply that there were "[t]oo many red flags here, counsel. I'm not
8 making any kind of judgment as to the strength of relief. Perhaps it gets granted,
9 perhaps not. I really don't know at this point. But there are a number of factors
10 working against the respondent as it relates to the flight risk. So, the court has
11 denied the request for bond on that basis." *Id.* The petitioner then filed a habeas
12 petitioner challenging the "constitutionality and sufficiency" of his bond hearing,
13 pointing out that the IJ's decision "identified no facts, contained no analysis,
14 prevented meaningful review, and rendered Miri's detention arbitrary and in
15 violation of his rights to due process." *Id.* (alterations omitted).
16 The district court agreed, granting the habeas petition and ordering the
17 petitioner's immediate release. *Id.* at *12. The court first determined that under
18 the Ninth Circuit's decision in *Martinez*, 124 F.4th at 779–80, 783, "the question
19 of whether a petitioner poses a flight risk is a question of law that is reviewable by
20 the Court." *Id.* at *5. Thus, "the Court has jurisdiction to review the Immigration
21 Judge's determination under an abuse of discretion standard." *Id.* Under this
22 standard, the court "cannot reweigh evidence" but could determine "whether the
23 immigration judge 'applied the correct legal standard.'" *Id.* at *8 (quoting
24 *Martinez*, 124 F.4th at 785). This included whether the IJ "'consider[ed] and
25 address[ed] in its entirety the evidence submitted by a petitioner'" and "'issue[d] a
26 decision that fully explains the [IJ's] reasons.'" *Id.* at *9 (quoting *Franco-*
27 *Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006)).
28

1 The district court then concluded that the IJ "abused its discretion in
2 denying Miri's bond." *Id.* The court found that the IJ "did not describe which
3 *Martinez* factors were considered, if any, or what evidence was relied on." *Id.* Nor
4 did the IJ "explain the reasons for denying Miri's bond" or show that it "relied on
5 the appropriate factors." *Id.* And the court held that the IJ's "conclusory
6 statements about "red flags" and "factors working against Miri" did not provide
7 an adequate explanation for a finding of flight risk. *Id.* at *8. Thus, the district
8 court agreed that Mr. Miri's detention was "fundamentally unfair and thus
9 violated the Due Process Clause of the Fifth Amendment." *Id.* at *5.
10 Similarly, the district court in *Zheng v. Rokosky, et al.*, concluded that
11 "Petitioner's bond hearing was fundamentally unfair and violated his due process
12 rights." No. 26-CV-01689, 2026 WL 800203, at *5 (D.N.J. Mar. 23, 2026). It
13 explained that while it was "not permitted to re-weigh evidence or determine
14 credibility," it must ensure that the IJ "applies the correct legal standard" and
15 "actually consider[s] the evidence and argument that a party presents." *Id.* at *4, 5
16 (quotations omitted). But the court found that the IJ's decision was "not supported
17 by any detail or reference to *any* factual evidence in the record." *Id.* at *6. The
18 court noted that the IJ "did not provide even a minimal articulation of the basis of
19 her decision" but "simply stated in mere conclusory fashion that Petitioner was a
20 flight risk." *Id.* The court thus held that this was "not an individualized
21 assessment. This was not a fundamentally fair bond hearing." *Id.*
22 Here, as in these two cases, Mr. Singh's bond hearing was "fundamentally
23 unfair and violated his due process rights." *Id.* at *5. First, the IJ did not apply the
24 "correct legal standard" because it "did not describe which *Martinez* factors were
25 considered, if any," and never weighed Mr. Singh's length of residence, family
26 ties, employment history, absence of criminal record and immigration violations,
27 and his manner of entry in the analysis. *Miri*, 2026 WL 622302, at *8, 9. Instead,
28 the IJ merely stated that "I am going to find that the respondent, uh, is a

significant flight risk, um, and that there's no amount of bond, uh, that would mitigate that risk. Um, and the Court is considering, uh, the expedited removal order." Exh. B at 6. And as in *Zheng*, the IJ "did not provide even a minimal articulation of the basis of her decision" but "simply stated in mere conclusory fashion that Petitioner was a flight risk." 2026 WL 800203, at *6.

Not only did the IJ apply the wrong legal standard by failing to consider any of the *Martinez* factors, its reliance on the expedited removal order defied this Court's previous habeas decision. In its previous habeas decision, this Court explained that detention under the expedited removal statute only applies to a person "who has not been admitted or paroled into the United States" and has not shown that he was "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." Exh. A at 6 (quoting 8 U.S.C. § 1225(b)(1)(A)(iii)(II)). But because Mr. Singh "has resided in the United States for fifteen years, has had continuous employment authorization, approved employment-based immigration petitions, and has substantial familial connections in Arizona," this Court found that § 1225(b)(1) "facially cannot apply" to Mr. Singh *Id.* (quotations omitted). In other words, instead of applying the correct *Martinez* factors, the IJ relied *solely* on a statutory provision that this Court had already found inapplicable.[1] By assuming

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[1] The IJ's only other rationale was its observation that, because Mr. Singh "left the United States for some period of time in Mexico to conduct some kind of business," his "own actions are what resulted in him being in expedited removal proceedings." Exh. B at 6. But Mr. Singh's H-1B visa gave him permission to travel outside the United States. *See* "FAQs for Individuals in H-1B Nonimmigrant Status," *available at*: https://www.uscis.gov/archive/faqs-for-individuals-in-h-1b-nonimmigrant-status. Thus, it was the theft of Mr. Singh's wallet and passport and the immigration officer's refusal to allow him to reenter—not his "own actions"—that resulted in his expedited removal order. And even if the expedited removal order *were* the result of Mr. Singh's "own actions," the IJ still never explained why these actions would have rendered him a flight risk under the *Martinez* factors.

1 that an expedited removal order automatically renders an individual a flight risk,
2 the IJ was effectively holding that "8 U.S.C. § 1225(b)(1) requires mandatory
3 detention"—which is exactly what this Court held the IJ should *not* do. Exh. A at
4 6–7.

5 Because the IJ did not apply the correct legal standard under *Martinez* and
6 instead relied on the exact rationale this Court previously rejected, Mr. Singh's
7 bond hearing was fundamentally unfair and violated due process.

8 **II. As in *Miri* and *Zheng*, this Court should order Mr. Singh's immediate**
9 **release.**

10 After finding that the IJ's failure to apply the correct legal standard
11 violated due process, both *Zheng* and *Miri* then considered the appropriate
12 remedy. In *Miri*, the court ordered the petitioner's "prompt release" and
13 prohibited the government from redetaining him "absent compliance with due
14 process and his legal protections." 2026 WL 622302, at *11. The court found
15 this to be "the remedy that will best return Miri to the status quo and restore
16 his position as it was prior to the detention." *Id.*

17 The court in *Zheng* similarly held that the petitioner's five-month detention
18 had "become so unreasonable" that "the only just remedy in these circumstances
19 is immediate release." *Id.* at *8. It explained that "Respondents have now
20 violated Petitioner's due process rights twice: first when they initially detained
21 him unlawfully under § 1225(b), and then again when they deprived him of a
22 constitutionally adequate bond hearing." *Id.* It noted that "[c]ourts across the
23 country confronting due process violations akin to that here have recognized that
24 a new hearing would either be unnecessary, futile, or an inadequate remedy." *Id.*
25 at *10 (collecting cases). Not only was the record "entirely devoid of any
26 individualized justification for Petitioner's continued detention," there was no
27 longer "any reason to believe that a second hearing would be fundamentally fair."
28 *Id.* Given that Respondents were "given an opportunity to cure their earlier

constitutional violation by providing Petitioner a fundamentally fair bond hearing" but "woefully failed to do so," the court declined to give them a "third bite at the apple" and ordered immediate release. *Id.* at *11.

Here, as in *Zheng*, Mr. Singh has been detained for nearly five months. So as in *Zheng*, his detention has "become so unreasonable" that "the only just remedy in these circumstances is immediate release." *Id.* at *8. This is because Mr. Singh's bond hearing was "entirely devoid of any individualized justification" for his continued detention" such that there is no "reason to believe that a second hearing would be fundamentally fair." *Id.* at *10. Just as in *Zheng*, Respondents were "given an opportunity to cure their earlier constitutional violation by providing [Mr. Singh" a fundamentally fair bond hearing" but "woefully failed to do so," and this Court should decline to give them a "third bite at the apple." *Id.* at *11. So as in *Miri*, immediate release is "the remedy that will best return [Mr. Singh] to the status quo and restore his position as it was prior to the detention." 2026 WL 622302, at *11. *Id.*

Claim and Prayer for Relief

For these reasons, this Court should grant Mr. Singh's habeas petition and order his immediate release. Should this Court decline to order immediate release, it should at a minimum order a new bond hearing in front of a different IJ.

Respectfully submitted,

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s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Singh
Email: kara_hartzler@fd.org