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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 AKYLBK MARRERO,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security,
17 PAMELA JO BONDI, Attorney General,
18 TODD M. LYONS, Acting Director,
19 Immigration and Customs Enforcement,
20 JESUS ROCHA, Acting Field Office
21 Director, San Diego Field Office,
22 JEREMY CASEY, Warden at Imperial
23 Detention Center,

24 Respondents.

Case No.: 26-cv-2332-BTM-GC

Motion to enforce the judgment

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I. Introduction

On April 30, 2026, following a concession by the government, the Court granted Mr. Marrero Suarez's habeas petition and ordered a bond hearing. ECF 7 at 2. The Court stated that if the government failed to comply with the order and the writ, Mr. Marrero can apply for relief from this Court. *Id.*

On May 15, 2026, the immigration judge (IJ) denied Mr. Marrero's petition for bond based on flight risk. ECF 10-1. The IJ denied bond by relying on facts that do not pass constitutional muster to support a flight determination. The IJ cited to constitutionally insufficient evidence that did not meet the high burden of establishing a risk of flight by clear and convincing evidence. The IJ did not consider the evidence as a neutral, fair and open-minded judge. And the IJ failed to consider alternatives to detention. As a result, this Court should find that the bond hearing violated this Court's order and due process. This Court should order Mr. Marrero's immediate release.

II. Statement of Facts

A. This Court ordered that a bond hearing be given.

On April 30, 2026, following a concession by the government, the Court granted Mr. Marrero Suarez's habeas petition. ECF 7. The Court order stated:

[T]he Government must provide Petitioner an *individualized bond* hearing before a *fair, neutral, and open-minded* immigration judge, where the Government bears the burden of proof of establishing, by *clear and convincing evidence*, that Petitioner poses a danger to the community or a risk of flight. If the IJ denies bond, the judge must make *specific findings* as to why Petitioner is a danger to the community or a flight risk. If Respondent or the IJ fail to comply with this order and the writ, Petitioner can apply to this Court for relief.

ECF 7 at 2 (emphasis added).

1 **B. DHS’s evidence was the denial of the asylum, the pending appeal,**
2 **and the testimony of Mr. Marrero.**

3 A bond hearing was held on May 14 and 15 before Immigration Judge
4 Stuart Zander. Exhibit A, transcript of bond hearing.¹ At the start of the hearing,
5 it was acknowledged the burden as “the government to show by clear and
6 convincing evidence that the respondent is a risk of flight or danger to the
7 community.” *Id.* at 2-3. A Spanish speaking interpreter participated in certain
8 portions of the proceedings. 2.

9 DHS counsel submitted as exhibits the order of deportation and the appeal
10 to that order. *Id.* at 2-3, 17-18. In the pro se appeal, written in English, Mr.
11 Marrero states that his immigration proceedings were rushed and he did not have
12 an opportunity to fairly present his case. He further noted that immigration laws
13 were violated and the IJ was “merely pandering to the [whims] of the current US
14 president, Donald Trump.” *Id.* at 27. Mr. Marrero submitted a packet of
15 information relating to his sponsor, which included a letter of support and tax and
16 work information. *Id.* at 2-3.²

17 DHS counsel’s only witness was Mr. Marrero. DHS counsel stated she
18 would also call the Mr. Marrero’s sponsor who was available and on the line, but
19 DHS never called him. *Id.* at 3. The IJ advised Mr. Marrero that he would be
20 asked questions by DHS counsel, then his own pro bono counsel, and then the IJ
21 would “have some follow-up.” *Id.* at 4.

22 In regard to his *immigration history*, the testimony revealed that Mr.

23
24

¹ Immigration hearings are not transcribed by court reporter. The attached
25 transcript was produced by a service contracted by counsel based on collected
26 recordings of each microphone at the bond hearing. Counsel submits the transcript
27 for convenience, but can also submit the audio recordings if the Court would
28 prefer.

² Upon request of the Court, Counsel will submit the exhibits for review.

1 Marrero entered the United States on December 2, 2019. *Id.* at 5-6, 23-24.³ He
2 explained that he had entered the U.S. two weeks prior to request asylum but he
3 was sent back to Mexico because of the remained in Mexico policy. *Id.* He has
4 been living in the U.S. since December 2, 2019. At that time, Mr. Marrero went to
5 a family member's house. *Id.* at 7. In 2020, he requested asylum with immigration
6 authorities. *Id.* at 7.

7 Mr. Marrero testified about his *ties to the community*. He informed the IJ
8 that he was given a social security number and work permit. *Id.* at 7, 23-24. He
9 has worked as a welder, as an electrician, and up to recently, he owned a
10 transportation LLC company. *Id.* at 7. Because of his detention, he missed an
11 audit and his business has been deactivated. If released, he plans to deal with
12 those issues and get his business running again. *Id.* at 11.

13 Mr. Marrero testified about his *family ties* to the United States. Despite his
14 wife and daughter living in Mexico [*Id.* at 9, 12, 19], he has family living in the
15 United States, including a cousin that is a U.S. Citizen and another cousin that is a
16 lawful permanent resident. *Id.* at 20-21. When asked if he is "close" to his family
17 from the United States, Mr. Marrero responded: "Anytime time allows, we get
18 together, we share." *Id.* at 20.

19 He testified that he gave one of his cousins his cell phone after being
20 detained. *Id.* at 12. That cousin has access to Mr. Marrero's bank account. *Id.* at
21 12. After his detention, this cousin informed him that his bank account was
22 overdrawn. *Id.* at 11-12. Mr. Marrero also has a nephew that he is close to but the
23 family has not heard from him in a year and they contacted authorities. *Id.* at 21.

24 His *sponsor is a lawful permanent resident* of the United States, who is
25 from the same Cuban neighborhood as Mr. Marrero. *Id.* at 9-10. They have

26
27 ³ DHS counsel's questioning appeared that she was not aware of Mr. Marrero's
28 entry date. She referred to "paperwork" that stated he entered in November 2020.
Id. at 5. That paperwork was not submitted as evidence and DHS counsel did not
subsequently counter the dates given by Mr. Marrero.

1 known each other their entire lives. *Id.* at 25-26. Mr. Marrero provided his
2 sponsor's address in Arizona [*Id.* at 25], which is only a five-minute drive from
3 where Mr. Marrero was living prior to his detention. *Id.* at 9-10. The sponsor
4 works as a mechanic at a cattle slaughterhouse. *Id.* at 11. Because Mr. Marrero
5 was evicted from his home following his detention by ICE, he will be living with
6 his sponsor if released from custody. *Id.* at 11-12.⁴ The sponsor was present at the
7 hearing should DHS wish to question him. *Id.* at 2-3.

8 Regarding his *asylum claim*, Mr. Marrero explained that his asylum claim
9 was based on a fear of returning to Cuba and harm he would face if returned there.
10 *Id.* at 9. Mr. Marrero explained that he is appealing because he does not believe he
11 received a fair hearing. *Id.* 26-25. He was not able to present evidence including
12 pictures of himself with the Cuban opposition leader. *Id.* He believes the IJ did
13 not allow him to be heard. *Id.*

14 In follow-up questioning by the bond hearing IJ, the IJ questioned if he
15 were to lose his appeal and he is ordered to report to ICE, would he report on the
16 date and time asked of him. *Id.* at 26. Mr. Marrero responds in the affirmative⁵ but
17 notes that he fears returning to Cuba. *Id.* at 26-27. He explained that returning to
18 Cuba would be like a death sentence that is why he and his family left Cuba. *Id.*
19 The exchange was as follows:

20 [00:25:22] Stuart: If you lose your appeal of your asylum case, you
21 will receive a final order of removal.

22 [00:25:29] Interpreter: [Spanish language]

23 [00:25:39] Stuart: When given a date and time to report for
24 removal, would you show up on that date and at that location at that

25 ⁴ The sponsor was available during the hearing to testify if needed. *Id.* at 12.

26 ⁵ It is clear from audio recording that Mr. Marrero clearly states in Spanish, "Yes,
27 but" to the question of whether he will report for removal. He then explains that he
28 fears returning to Cuba. The interpreter does not include the "Yes, but" and only
states at [00:26:14] "I fear going back to my country, I can't return to Cuba." Exh.
A at 26. Counsel for Mr. Marrero later informs the court about this
misinterpretation. *Id.* at 27.

1 time to be removed from the United States?

2 [00:25:50] Interpreter: [Spanish language]

3 [00:26:08] Respondent: [Spanish language]⁶

4 [00:26:14] Interpreter: I fear going back to my country, I can't
5 return to Cuba.

6 [00:26:22] Stuart: If you are ordered [crosstalk]

7 [00:26:23] Respondent: [Spanish language]

8 [00:26:42] Interpreter: Yes, I can't go back to my country. I know
9 that Donald Trump is trying to make reforms there. Right now, if I
go back, it's like signing a death sentence for me.

10 [00:27:03] Respondent: [Spanish language]

11 [00:27:16] Interpreter: Right now, as long as the government, with
12 tyranny and the dictatorship, I can't return to Cuba.

13 [00:27:30] Respondent: [Spanish language]

14 [00:27:30] Respondent: [Spanish language]

15 [00:27:40] Interpreter: I've been threatened with death many times.
16 I had to take my wife and child out of there because their lives are
also in danger.

17 [00:27:52] Stuart: I have no further questions. DHS, do you have
18 any follow-up questions?

19 *Id.* at 26-27.

20 Immigration counsel clarified that she believed that the interpreter missed
21 the affirmative response that he would report for removal when told. *Id.* at 27. The
22 IJ asked more questions to clarify. Again, Mr. Marrero responded in the
23 affirmative. He would report to immigration but reiterated his fear of returning to
24 Cuba. *Id.* at 27-28. The IJ asked if he would go to Cuba, Mr. Marrero responded
25 that he would prefer to die here. *Id.* at 28.

26 [00:32:21] Stuart: If you lose your appeal, will you leave the United
27

28 ⁶ This is where Mr. Marrero can be heard saying: "Si, pero" / "Yes, but" before giving the fuller explanation provided by the interpreter.

1 States when told?

2 [00:32:31] Interpreter: [Spanish language]

3 [00:32:41] Respondent: [Spanish language]

4 [00:32:42] Interpreter: Yes.

5 [00:32:43] Stuart: Even your order for removal is to Cuba, you
6 would be deported to Cuba. Do you understand?

7 [00:32:53] Interpreter: [Spanish language]

8 [00:33:00] Respondent: [Spanish language]

9 [00:33:07] Interpreter: For Cuba, no. I would prefer to die here.

10 *Id.* at 27-28.

11 In closing, DHS claimed Mr. Marrero was a flight risk. *Id.* at 30. DHS
12 relied heavily on the fact that Mr. Marrero had entered illegally and that his
13 asylum claim has been denied by another IJ. DHS stated that Mr. Marrero has
14 “limited family ties” because his wife and daughter do not live in the United
15 States. *Id.* According to DHS counsel, the fact that Mr. Marrero lost his business
16 and his home after his detention, weighs in favor of finding him a flight risk. *Id.* at
17 30.

18 **C. The IJ denied bond based on risk of flight, relying heavily on Mr.**
19 **Marrero’s stated fear of returning to Cuba.**

20 The IJ denied based on risk of flight. The IJ stated he looks to the Guerra
21 factors and whether the sponsor is credible. Exh. A at 30-31. The IJ appeared to
22 go through the *Guerra* factors, often not stating whether the factor weighed in
23 favor or against bond. *Id.* at 31-34. The IJ denied as follows:

24 In this case, the respondent is 37 years old. He’s married and has one
25 daughter. Both the daughter and his wife live in Mexico and have no
status in the United States.

26 Regarding *family ties* to the United States, he has three cousins and
27 one nephew in the United States. The three cousins, one is a United
28 States citizen and two are lawful permanent residents, and *he does*
not seem to have or share a close relationship with them. In regards

1 to the nephew, he stated the nephew has been missing and his
2 whereabouts are unknown.

3 Regarding *matter of entry*, he has entered the United States twice in
4 2019, both times without permission. The first time he entered was in
5 early December 2019, and he claimed asylum in the United States,
6 but was returned to Mexico and told that he needed to claim asylum
7 there first. Approximately two weeks later is when he entered again
8 without inspection and has stayed in the United States since for the
9 last six and a half years.

10 He has lived in the Phoenix area for approximately the last six and a
11 half years, showing that he has a *length of residence* in the United
12 States. In the last six and a half years, he has applied for asylum and
13 obtained his work authorization. He has worked as a driver and
14 during his six and a half years has *not committed any crimes* in the
15 United States.

16 Even though he has lost his address, he has been evicted, he does
17 have a *fixed address* to live at with his sponsor. He has known his
18 sponsor his entire life, and the sponsor is a legal permanent resident
19 in the United States.

20 The respondent underlying asylum claim was denied by an
21 immigration judge. The judge denied all forms of relief, and that is
22 currently under appeal. His *appeal in that case is speculative at best*.

23 More specifically, what has weighed against the respondent is his
24 answer, if released, would he report to be removed from the United
25 States? When asked specifically if he would leave the United States
26 if ordered removed to Cuba, the respondent said he would rather die
27 in the United States than go to Cuba, stating that he would—[. . .]
28 The respondent has expressed *a strong desire to not leave the United
States and to not follow court orders*. I note that the immigration
judge in the underlying asylum case ordered the respondent removed
to Cuba.

Therefore, based upon the *Guerra* factors and *the fact that the
respondent would refuse to deport if ordered removed from the
United States, he would not follow court orders*, I would be denying
bond as a risk of flight. *Id.* at 18.

Id. at 31-34 (emphasis added and cleaned up taking out transcription noting
interpretation). The IJ did not consider alternatives to detention. *Id.*

1 The IJ entered a written order staying bond denied based on reasons set
2 forth in the record. ECF 10-1.

3 Mr. Marrero now requests that this Court grant this Motion to Enforce its
4 prior order.

5 **III. Argument**

6 **A. This Court has jurisdiction to consider this motion and there is
7 no need for exhaustion.**

8 This Court specifically retained jurisdiction to enforce the writ in this case
9 after ordering a bond hearing subject to certain procedural requirements. ECF No.
10 10 at 5. District courts have the authority to review compliance with prior orders
11 granting habeas relief, including orders for bond hearings. *Lu v. Divver*, No. 26-
12 CV-781-JES-DEB, 2026 WL 1755174, at *2 (S.D. Cal. June 2, 2026) (citing
13 *Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011)). Moreover, under §
14 2241, district courts retain “habeas jurisdiction over constitutional claims or
15 questions of law.” *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir. 2017)
16 (cleaned up).

17 Here, because Mr. Marrero argues that the process he was provided at his §
18 1226(a) bond hearing was legally and constitutionally deficient, “this Court
19 retains jurisdiction to review Petitioner’s claims.” *Perez Velasquez*, 2026 WL
20 1042479, at *2; *see also W.T.M.*, 2026 WL 262583, at *1 (finding jurisdiction for
21 a similar challenge); *Soriano*, --- F. Supp. 3d ---, 2026 WL 969764, at *3 (same);
22 *Miri*, 2026 WL 622302, at *5 (same); *Gimenez v. Hernandez*, No. 26-CV-966-
23 GJL, 2026 WL 1156075, at *4 (W.D. Wash. Apr. 29, 2026) (same); *Garcia v.*
24 *Hyde*, 817 F. Supp. 3d 112, 124 (D.R.I. 2025) (same).

25 Furthermore, based on information and belief, on June 10, 2026, Mr.
26 Marrero filed an appeal of the IJ denial of bond with the BIA. That case remains
27 pending.

28 Regardless, there is need not exhaust his claims to the BIA first. Under the

factors outlined in *Puga v. Chertoff*, 488 F.3d 812 (9th Cir. 2007),⁷ prudential exhaustion is not necessary when a habeas petitioner raises a constitutional challenge to the adequacy of a bond hearing, which is a claim well-suited for federal court review. *Garcia Miranda v. Hernandez*, No. 26-cv-906, 2026 WL 1328227, at *2 (W.D. Wash. May 13, 2026). Moreover, when a habeas petitioner contends that a bond hearing did not comply with the Court’s prior order requiring such hearing, prudential exhaustion is excused. *See Zhenwei Lu v. Divver*, No. 26-cv-781-JES-DEB, 2026 WL 1755174, at *3–4 (S.D. Cal. June 2, 2026) (joining “the many other courts that have excused prudential exhaustion...for purposes of reviewing compliance with the Court’s prior order for a bond hearing”); *Sanchez Henao v. Hernandez*, No. 26-cv-707, 2026 WL 1492714, at *2 (W.D. Wash. May 28, 2026) (“a hearing conducted pursuant to a district court’s order requiring the government to be held to a certain legal standard is reviewable for compliance with the court’s order” (citing *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024))); *see also Lopez v. Paulk*, --- F. Supp. 3d ---, 2026 WL 961948, at *3–4 (M.D. Ga. Apr. 6, 2026).

Finally, the Court may waive prudential exhaustion “where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (internal quotation marks omitted). Those factors apply here. For example, “Petitioner raises a constitutional challenge to the adequacy of his bond hearing, which is better suited to review by the federal courts.” *Zarei v. Larose*, No. 26-

⁷ In *Puga*, the Ninth Circuit applied, in the immigration habeas context, the following standard for determining whether to require prudential exhaustion: “(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.” 488 F.3d at 815 (citations omitted).

CV-02335-GPC-MMP, 2026 WL 1415042, at *3 (S.D. Cal. May 19, 2026); *See also W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT, 2026 WL 262583, at *2 (W.D. Wash. Jan. 30, 2026); *Scott v. Wamsley*, No. 2:25-CV-1819, 2025 WL 3514304, at *4 (W.D. Wash. Dec. 8, 2025), reconsideration denied, No. 2:25-CV-1819, 2026 WL 83971 (W.D. Wash. Jan. 12, 2026) (finding that due process and statutory challenge to continued detention is “fundamentally a question of law”). What’s more, Mr. Marrero would suffer irreparable harm if he were to be required to appeal with the BIA. As noted by Judge Curiel in *Zarei*, the “inherent delays in the current appeals process support a finding that Petitioner will suffer irreparable injury if he is required to wait for BIA adjudication of his bond denial.” *Zarei*, 2026 WL 1415042, at *4; *See also W.T.M.*, 2026 WL 262583, at *3 (finding irreparable injury where BIA review exceeded 200 days and “[d]istrict courts in this Circuit ‘routinely’ waive prudential exhaustion requirements for noncitizens facing prolonged detention while awaiting administrative appeals.”).

The combination of factors here supports a finding that waiver of exhaustion is appropriate here.

B. The bond hearing violated this Court’s Order, was legally inadequate, and violated the Due Process Clause of the Fifth Amendment.

1. Standard of Review

“When questions require a close review of agency-found facts,” like an administrative judge’s finding of dangerousness or flight risk in a bond hearing, the courts “review for an abuse of discretion.” *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024); *see also Loba L.M. v. Andrews*, No. 1:25-CV-00611-JLT-SAB, 2026 WL 710307, at *5 (E.D. Cal. Mar. 13, 2026) (applying abuse of discretion standard to review compliance with an order for bond hearing on habeas); *Y.S.G. v. Andrews*, No. 2:25-CV-1884-SCR, 2025 WL 2979309, at *8 (E.D. Cal. Oct. 22, 2025) (same); *C.A.R.V.*, 2026 WL 241823 at *6 (same). This Court’s review for abuses of discretion is limited to those which allege “violation

1 by the agency of constitutional, statutory, regulatory or other legal mandates or
2 restrictions.” See *Abdelhamid v. Ilchert*, 774 F.2d 1447, 1450 (9th Cir. 1985)
3 (quoting *Strickland v. Morton*, 519 F.2d 467, 471 (9th Cir. 1975)).

4 Although the government has discretion in immigration bond hearings, that
5 discretion remains constrained by the requirements of constitutional due process
6 limits. *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“[T]he
7 government’s discretion to incarcerate non-citizens is always constrained by the
8 requirements of due process.”). A noncitizen may show that an IJ abused her
9 discretion in violation of the due process clause in a bond hearing by
10 demonstrating either that the IJ “simply did not apply the right standard to the
11 facts” or that “the IJ erred because the evidence itself could not—as a matter of
12 law—have supported the decision to deny bond.” *Garcia v. Hyde*, 817 F. Supp. 3d
13 112, 126 (D.R.I. Dec. 3, 2025) (internal quotations omitted); see also *Nat. Res.*
14 *Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016) (“An agency
15 acts contrary to the law when it gives mere lip service or verbal commendation of
16 a standard but then fails to abide the standard in its reasoning and decision.”).

17 Mr. Marrero’s bond hearing contained major legal errors that each
18 constituted an abuse of discretion beyond the bounds of § 1226(a), and that each
19 lacked relevant specific findings and analysis of appropriate bond conditions.

20 2. The IJ did not provide an individualized bond hearing or
21 require that the evidence meet the high burden of establishing
a risk of flight by clear and convincing evidence.

22 The IJ’s order was based on the conclusion that he poses a risk of flight, the
23 IJ relied upon a series of facts that do not provide a constitutionally sufficient
24 basis upon which to have denied Mr. Marrero’s bond. The IJ failed to provide an
25 individualized hearing. See, e.g., *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202
26 (9th Cir. 2022) (explaining that 8 U.S.C. § 1226(a) requires an “individualized
27 bond determination” (internal quotation marks omitted). The IJ relied on
28 “mechanistic” factors that are true of nearly every person in prolonged detention.

1 *Sabino v. Semaia*, No. 5:26-CV-02994-MAR, 2026 WL 1802430, at *4 (C.D. Cal.
2 June 18, 2026) (noting that the IJ was negatively applying a factor that is
3 applicable to all members of a class). This compels the conclusion that the IJ
4 failed to hold the government to the clear and convincing evidence standard
5 ordered by this Court.

6 *a. Mr. Marrero's truthful statement of his fear of returning*
7 *to his home country cannot be a basis for denying bond.*

8 The IJ denied bond primarily based on Mr. Marrero's fear of being killed or
9 tortured if returned to Cuba. According to the IJ, Mr. Marrero has a "strong desire
10 to not leave the United States and to not follow court orders." Exh. A at 18. The
11 IJ found that Mr. Marrero "would refuse to deport if ordered removed from the
12 United States, he would not follow court orders." *Id.* This finding is wrong for
13 several reasons.

14 First, it is contrary to Mr. Marrero's testimony. In response to the IJ's
15 follow-up questions, Mr. Marrero affirmatively responded that he would in fact
16 comply and report to immigration authorities if he were to lose his appeals. *Id.* at
17 26-27. The IJ asked again and he affirmative responded that he would comply.
18 The IJ asked "If you lose your appeal, will you leave the United States when
19 told?" *Id.* at 27. Mr. Marrero responded with a "yes." *Id.* Then, Mr. Marrero, who
20 has a pending asylum claim, truthfully stated that he fears returning to Cuba. Mr.
21 Marrero, thus, clearly stated that if he was told to report to ICE after losing his
22 appeals, he would comply but his fear for returning to Cuba would continue.

23 Second, any ambiguity in Mr. Marrero's answer required a "fair, neutral,
24 and open-minded immigration judge" [ECF 7 at 2] to make further inquiry. But
25 the IJ in this case did not do so.

26 Third, the IJ's finding would effectively deny bond for anyone who
27 truthfully restates their fear of returning to their home country would deny bond
28 for virtually everyone claiming asylum. Noncitizens seeking asylum or other form

1 of relief must establish a credible fear of persecution. *See Jama v. ICE*, 543 U.S.
2 335, 348 (2005) (“If [non-citizens] would face persecution or other mistreatment
3 in the country designated under § 1231(b)(2), they have a number of available
4 remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and]
5 relief under an international agreement prohibiting torture.”). Mr. Marrero, like
6 other asylum seekers, is stating that he cannot return to Cuba because of a fear of
7 being persecuted. It would be contrary to his asylum claim to state that he would
8 have no problem hoping on a plane to go back to Cuba.

9 *b. The evidence regarding the Guerra factors did not meet*
10 *the clear and convincing standard.*

11 This Court ordered that the IJ “must make specific findings as to why
12 Petitioner is a danger to the community or a flight risk” [ECF 7 at 2], they IJ did
13 not follow this Court’s order. The IJ did cite a series of facts under the *Guerra*
14 factors, but the IJ did not make findings as to whether each factor weighed in
15 favor or against bond.

16 The possible *Guerra* factors that the IJ may have used as negatives against
17 bond do not pass constitutional muster and it cannot be that they establish clear
18 and convincing evidence of risk of flight. The first factor that the IJ may have
19 relied on was the manner of entry. The manner of entry factor in this case is
20 evidence that is “common to all detainees” and fails to meet the clear and
21 convincing standard. *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011);
22 *Mejia v. Bondi*, No. CV 26-1592, 2026 WL 752560, *4 (D.N.J. Mar. 17, 2026)
23 (generalized assumptions about an individual’s manner of entry, without a
24 meaningful consideration of their particular circumstances, would effectively
25 render the bond framework meaningless). “Entry without inspection is common
26 among asylum seekers; absent individualized evidence regarding the particular
27 circumstances surrounding Petitioner’s entry or other evidence of past
28 noncompliance, it is insufficient to support a reasonable inference of Petitioner’s

1 tendency toward future nonappearance.” *Tiboko-Tifuh v. Noem*, No. 26-CV-1215-
2 JO-DEB, 2026 WL 1603795, at *2 (S.D. Cal. June 4, 2026).

3 In this case, although Mr. Marrero entered without inspection in December
4 of 2019, he soon thereafter in 2020, reported to ICE and requested asylum. Exh. A
5 at 7. DHS did not provide any evidence of non-compliance with immigration
6 authorities during the six years Mr. Marrero has been legally living in the country.
7 By relying on the matter of entry from over six years ago but ignoring the fact that
8 he reported to immigration soon after and has been living lawfully since then, the
9 IJ also failed to “assess the risk of flight . . . on a current basis.” *Chi Thon Ngo v.*
10 *Immigr. & Naturalization Serv.*, 192 F.3d 390, 398 (3rd Cir. 1999). “The process
11 due even to excludable [noncitizens] requires an opportunity for an evaluation of
12 the individual’s current . . . risk of flight.” *Id.*; see also *Judulang v. Chertoff*, 562
13 F.Supp.2d 1119, 1127 (S.D. Cal. 2008). The IJ did not consider the manner of
14 entry factor against the *current* strong community ties and the many years of
15 immigration law compliance. All of this evidence certainly overcomes any
16 concerns regarding his initial manner of entry. “In other words, the evidence that
17 the IJ *did* consider could not—as a matter of law—have supported a finding of
18 *current* flight risk, and the IJ’s mere presumption that it did violated Mr.
19 [Marrero’s] due process rights.” *Garcia*, 817 F.Supp.3d at 130.

20 The second possible factor that the IJ may have relied on as weighing
21 against Mr. Marrero is DHS counsel’s claim that he lacked family ties in the
22 United States. But such a finding is plainly contrary to the record, does not reach
23 clear and convincing evidence, and is not individualized. Exh. A at 7. The IJ later
24 stated that Mr. Marrero “does not seem to have or share a close relationship” with
25 his three cousins who are United States citizens and lawful permanent residents.
26 *Id.* at 32. The record clearly contradicts this finding. Mr. Marrero testified that he
27 spends as much time as he can with his cousins and that he entrusted one of these
28 cousins with his phone and bank account information. *Id.* at 11-12, 20. It is

1 unclear how a neutral, fair, and open-minded IJ could have concluded that Mr.
2 Marrero was not close to his family in the United States.

3 But even if true that he was not close to his cousins, this factor cannot be
4 grounds for denying bond. By definition, almost everyone who flees from their
5 country seeking asylum leaves behind family. Through no fault of their own,
6 these immigrants will have little to no family here. But that does not affirmatively
7 *prove* that all these immigrants are flight risks. It *proves* only that they fled their
8 home country alone and in a hurry, as many asylum seekers are required to do.
9 Given that the government has the burden to affirmatively *prove* risk of flight by
10 clear and convincing evidence, this factor is not proper grounds for denying bond.
11 *See N.A. v. Warden*, No. 25-cv-03007-MBK, 2026 WL 734587, at *8 (C.D. Cal.
12 Feb. 20, 2026), *report and recommendation adopted sub nom. N.A. v. Warden*,
13 No. 25-cv-03007-MBK, 2026 WL 734585 (C.D. Cal. Mar. 12, 2026) (opining that
14 short length of residence did not meet the government’s burden because, while
15 “undoubtedly relevant to flight risk,” it is “also true of virtually every asylum
16 seeker apprehended at the border, many of whom the Government releases on
17 bond”).

18 Finally, the IJ denied bond because Mr. Marrero’s asylum claim was denied
19 and was now on appeal. Exh. A at 33. But the simple fact that Petitioner’s asylum
20 claim was denied and is on appeal is not sufficient to prove clear and
21 convincingly that he is a flight risk. As stated by the Ninth Circuit, an “IJ’s
22 conclusion that [Petitioner] was a flight risk was the fact—common to all
23 detainees afforded *Casas* bond hearings—that [Petitioner] had already been
24 ordered removed by a final, administrative order, diminishing his incentive to
25 appear for further removal proceedings. Although this is a relevant factor in the
26 calculus, it alone does not constitute clear and convincing evidence that Singh
27 presented a flight risk justifying denial of bond.” *Singh v. Holder*, 638 F.3d 1196,
28 1205 (9th Cir. 2011). Any weight given to this factor is weakened by the fact that

1 the denial of the asylum claim is on appeal with the Board of Immigration
2 Appeals. *Timbigamba v. FCI Berlin, Warden*, No. 26-CV-281-LM-AJ, 2026 WL
3 1470320, at *10 (D.N.H. May 26, 2026) (rejecting denial of bond on a flight risk
4 finding where the primary evidence was a non-final order of removal against the
5 petitioner).

6 “Even if such scant evidence could support an inference of flight risk, it
7 was outweighed by evidence submitted by Petitioner.” *Tiboko-Tifuh v. Noem*, No.
8 26-CV-1215-JO-DEB, 2026 WL 1603795, at *2 (S.D. Cal. June 4, 2026).
9 Specifically, Mr. Marrero had been legally living in the United States for six
10 years. He had no criminal history. He worked. He has close ties to his sponsor and
11 would be living in the neighborhood where he lived prior to his detention. He has
12 cousins with lawful status that live in the United States. The IJ concluded that
13 Petitioner presented a flight risk without explaining as to how the alleged negative
14 factors outweighed Petitioner’s more significant showing. These unsupported
15 inferences “cannot take the place of evidence or satisfy the clear and convincing
16 evidentiary burden.” *Tiboko-Tifuh*, 2026 WL 1603795, at *3.

17 3. The immigration judge failed to consider alternatives to
18 detention for noncitizens found not to be a danger

19 When an immigration judge finds an individual does not pose a danger, as
20 is the case here, they should consider an amount of bond necessary to ensure the
21 noncitizen’s presence at future hearings and to ensure the noncitizen will report
22 for removal if ordered to do so *Matter of Urena*, 25 I&N Dec. 140 (BIA 2009);
23 *See, e.g., Davis v. Garland*, No. 22-CV-443-LJV, 2023 WL 1793575, at *6
24 (W.D.N.Y. Feb. 7, 2023) (stating that “it stands to reason that an immigration
25 judge who does not even consider conditional release may wrongfully detain
26 certain noncitizens who might otherwise be safely released”); *Joseph v. Barr*, No.
27 19-CV-565, 2019 WL 3842359, at *9 (W.D.N.Y. Aug. 15, 2019) (holding that “to
28 sustain the prolonged detention of a[noncitizen] who has been admitted to the

country and is subject to removal proceedings,” a neutral decisionmaker must consider “less restrictive alternatives to detention”).

Because the immigration judge made no mention of alternatives to detention, he did not properly consider conditional release conditions, and therefore, has failed to be a neutral decisionmaker.

IV. This Court should remedy the violations of its order by ordering immediate release.

Courts are increasingly ordering release in lieu of a bond hearing. *See, e.g., Hernandez-Garcia v. Warden*, No. 26-cv-1248-JO-BLM, ECF No. 11 (Mar. 26, 2026); *Izquierdo Mendez v. Casey*, No. 26-cv-1731-JO-SBC, ECF No. 6 (Mar. 30, 2026). This is especially true where courts are finding the IJ’s failure to apply the correct legal standard violated due process. For instance, the district court in *Miri v. Bondi* ordered the petitioner’s “prompt release” and prohibited the government from redetaining him “absent compliance with due process and his legal protections.” No. 26-cv-00698-MEMF-MAR, 2026 WL 622302, at *11 (C.D. Cal. Mar. 5, 2026). The court found this to be “the remedy that will best return Miri to the status quo and restore his position as it was prior to the detention.” *Id.*

The District of Rhode Island did the same when facing similar bond hearing violations late last year. *Garcia v. Hyde*, __ F.Supp.3d __, 2025 WL 3466312, at *11 (D.R.I. Dec. 3, 2025). In so doing, it reasoned, “Given the due process violations that pervaded his bond hearing, the Court finds that [Petitioner’s] immediate release is appropriate.” *Id.* It cited to *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), for the proposition that “due process is flexible and calls for such procedural protections as the particular situation demands.” *Id.* It noted, “The Court is mindful that, in recent months, IJs have faced enormous pressure from the Executive Branch to dismiss cases quickly and rule in certain ways.” *Id.* (footnotes omitted). “However, ‘[d]ue process is not satisfied . . . by rubberstamp denials [of bond],’ and IJs are not absolved of their duty to ensure that noncitizens

1 receive constitutionally adequate bond hearings.” *Id.* (internal alterations in
2 original) (quoting *Chi Thon Ngo v. INS*, 192 F.3d 398 (3d Cir. 1999)).

3 In *Zheng v. Rokosky*, No. 26-cv-01689, 2026 WL 800203, at *3 (D.N.J.
4 Mar. 23, 2026), the district court similarly held that the petitioner’s five-month
5 detention had “become so unreasonable” that “the only just remedy in these
6 circumstances is immediate release.” *Id.* at *8. It explained that “Respondents
7 have now violated Petitioner’s due process rights twice: first when they initially
8 detained him unlawfully under § 1225(b), and then again when they deprived him
9 of a constitutionally adequate bond hearing.” *Id.* It noted that “[c]ourts across the
10 country confronting due process violations akin to that here have recognized that
11 a new hearing would either be unnecessary, futile, or an inadequate remedy.” *Id.*
12 at *10 (collecting cases). Not only was the record “entirely devoid of any
13 individualized justification for Petitioner’s continued detention,” there was no
14 longer “any reason to believe that a second hearing would be fundamentally fair.”
15 *Id.* Given that Respondents were “given an opportunity to cure their earlier
16 constitutional violation by providing Petitioner a fundamentally fair bond
17 hearing” but “woefully failed to do so,” the court declined to give them a “third
18 bite at the apple” and ordered immediate release. *Id.* at *11.

1 Here, Petitioner has been detained *four times longer* than the petitioner in
2 *Zheng*. So as in *Zheng*, his detention has “become so unreasonable” that “the only
3 just remedy in these circumstances is immediate release.” *Id.* at *8. And just as in
4 *Zheng*, Respondents were “given an opportunity to cure their earlier constitutional
5 violation by providing [Petitioner] a fundamentally fair bond hearing” but
6 “woefully failed to do so,” and this Court should decline to give them a “third bite
7 at the apple.” *Id.* at *11. Immediate release is “the remedy that will best return
8 [Petitioner] to the status quo and restore his position as it was prior to the
9 detention.” *Miri*, 2026 WL 622302, at *11. *Id.*

10 Respectfully submitted,

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12 Dated: July 10, 2026

s/ Zandra L. Lopez
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