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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRIGIDO RODRIGUEZ-MIRALRIO,

Petitioner,

v.

CHRISTOPHER J. LAROSE, WARDEN
OF OTAY MESA REGIONAL
DETENTION CENTER, et al.,

Respondents.

CASE NO.: 26-cv-2331-AGS-BJW

**Amended Petition for Habeas
Corpus¹**

This Court previously granted Brigido Rodriguez-Miralrio's habeas petition. *See Rodriguez Miralrio v. Noem*, No. 25-cv-3723-AGS-BJW (S.D. Cal.). It ruled that Respondents must provide Mr. Rodriguez, a 55-year-old who first came to the United States lived in 1988, with a bond hearing that comports with 8 U.S.C. § 1226(a). *Id.*

Although an immigration judge indeed denied bond on January 9, 2026, a hearing that complied with § 1226(a), corresponding regulations, and BIA

¹ The undersigned apologizes for the delay in this filing. Mr. Rodriguez's case was unusually complex given that it involved obtaining a bond hearing recording, making a transcript, and determining what occurred in Mr. Rodriguez's prior habeas petition. The undersigned's failure to seek additional extensions was an oversight, and he asks that the Court not punish Mr. Rodriguez for it.

1 precedent it was not. To the contrary, the IJ acknowledged that her decision was
2 based entirely on a 2022 DUI that constitutes the only blip on Mr. Rodriguez's
3 otherwise exemplary tenure in this country. The IJ did not consider the myriad of
4 factors that she is required to under caselaw before determining that someone is a
5 danger to the community or flight risk. Nor did the IJ provide *any* explanation for
6 why Mr. Rodriguez is a flight risk—despite the fact that he is a man in his fifties
7 whose daughters, brothers, and sisters live in the United States. This was no
8 decision by a neutral decisionmaker.

9 This Court should order Mr. Rodriguez released, the remedy courts
10 increasingly choose in this situation. That is particularly so because Respondents
11 also violated Mr. Rodriguez's right to due process when they detained him in
12 October 2025. As explained below, Respondents had known about the 2022 DUI
13 since it occurred and when they placed him on parole. Mr. Rodriguez was told
14 that it would be fine so long as he continued to check in with his ICE officer. He
15 did so without incident. But last Fall, Respondents detained him without notice.

16 This Court should grant the amended petition.

17 STATEMENT OF FACTS

18 Mr. Rodriguez, 55 years old, was born in Mexico. Ex. A. ¶ 1. He entered
19 the United State without permission in 2002. *Id.* He has not left since. He has
20 three American daughters and extensive family members in the United States. Ex.
21 A ¶ 2; Ex. B at 1–2. His U.S. citizen brother has volunteered as his sponsor as he
22 pursued immigration relief. Ex. B at 2.

23 In 2022, Mr. Rodriguez was pulled over for drunk driving in Texas. *Id.*
24 After a brief stint in jail, he was contacted by ICE. Ex. A ¶ 3. They let him stay in
25 the country so long as he checked in periodically while he pursued immigration
26 relief. *Id.* Mr. Rodriguez was formally convicted of driving under the influence in
27 2023. Ex. B at 2. He meanwhile paid the fine, took the required classes, and as
28 promised, checked in with ICE. *Id.*; Ex. A ¶ 3. This continued without incident

1 until the fall of 2025. Ex. A ¶ 3.

2 At an October 2025 check-in, ICE detained him. *Id.* ¶ 4. They gave
3 Mr. Rodriguez no explanation, and no chance to explain himself. *Id.* He filed a
4 petition for habeas corpus, seeking a bond hearing under 8 U.S.C § 1226(a). This
5 Court granted the petition. *See Rodriguez Miralrio*, No. 25-cv-3723-AGS-BJW.

6 On January 9, 2026, Mr. Rodriguez appeared at such a bond hearing. *See*
7 Ex. B. It did not go well.

8 His lawyer presented the facts discussed above: How long Mr. Rodriguez
9 had been in the country, his family ties, his otherwise exemplary behavior, and
10 noted his likelihood of success in seeking cancellation of removal. Ex. B at 1–2.
11 He also noted that Mr. Rodriguez had obtained a Social Security card and work
12 authorization. *Id.* at 2. Mr. Rodriguez’s brother promised the IJ that he would
13 support and house him. ECF No. 1-4 at 7. His niece told the IJ how her uncle was
14 seemingly incapable of not working—whether it be at a construction site or
15 restaurant. *Id.* at 10. Not even a heart attack in 2010 slowed him down. *Id.* There
16 were letters from other family members, including his daughters, with copies of
17 their American passports or driver’s licenses. *Id.* at 5–13.

18 The IJ responded with one question: When was the DUI? *Id.* When she
19 learned the incident was in 2022—leading to a 2023 misdemeanor conviction—
20 the IJ responded that “[w]hen I see DUI’s like that, especially when they’re
21 recent, my tentative is to grant no bond.” *Id.*

22 Respondents’ counsel then argued that Mr. Rodriguez was a danger to
23 society because of the DUI. In the alternative, he argued, Mr. Rodriguez “is a
24 flight risk and if a bond is set, [it should] be set at \$5000 with alternatives to
25 detention.” *Id.* Counsel offered no reason for why Mr. Rodriguez was a flight risk .

26 This was the entirety of the IJ’s ruling: “I will deny bond in this case before
27 I enter an order enter a finding that the respondent is a danger to the community
28 and is a flight risk. Thank you. Appeal is due February 9, 2026.” *Id.*

ARGUMENT

I. Mr. Rodriguez's bond hearing 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 danger to the community or a flight risk. For instance, the IJ did not consider or weigh Mr. Rodriguez's nearly 25 years of continuous residence, his history of authorized employment, his U.S. citizen-born daughters, or his extended family. Instead, the IJ found that Mr. Rodriguez was a danger to the community based solely on his four-year-old DUI. Ex. B at 2. The IJ found he was a flight risk for no reason at all—not even Respondents had proffered one. *Id.* 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) (citing *In Re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)).

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;

1 (8) any attempts by the alien to flee prosecution or otherwise escape
2 from authorities; and

3 (9) the alien's manner of entry to the United States.

4 *Id.* (quoting *In Re Guerra*, 24 I. & N. Dec. at 40).

5 Here, the IJ did not apply or appear to consider more than one of these
6 factors—his criminal record—while ignoring the (at least) six others that cut in
7 his favor. Again, this was the entirety of the IJ's ruling: "I will deny bond in this
8 case before I enter an order enter a finding that the respondent is a danger to the
9 community and is a flight risk. Thank you." Ex. B at 3.

10 Several district courts have granted habeas relief on the basis that an IJ's
11 failure to apply the correct legal standard includes the failure to consider relevant
12 factors and violates due process. First, in *Miri v. Bondi*, a judge in the Central
13 District of California reviewed a bond hearing for an asylum seeker from Iran
14 who had lawfully entered on a visitor's visa ten years earlier. No. 5:26-CV-
15 00698-MEMF-MAR, 2026 WL 622302, at *1 (C.D. Cal. Mar. 5, 2026). The
16 petitioner had a wife and minor child in the U.S. and had "attended all scheduled
17 interviews and appointments in connection with his asylum application." *Id.*

18 Nevertheless, the IJ's written memorandum denied bond, stating only "the
19 respondent failed to meet his burden to establish that he is not a flight risk." *Id.* at
20 *2. The IJ's verbal basis for finding flight risk during the hearing was simply that
21 there were "[t]oo many red flags here, counsel. I'm not making any kind of
22 judgment as to the strength of relief. Perhaps it gets granted, perhaps not. I really
23 don't know at this point. But there are a number of factors working against the
24 respondent as it relates to the flight risk. So, the court has denied the request for
25 bond on that basis." *Id.* The petitioner then filed a habeas petition challenging the
26 "constitutionality and sufficiency" of his bond hearing, pointing out that the IJ's
27 decision "identified no facts, contained no analysis, prevented meaningful review,
28

1 and rendered Miri's detention arbitrary and in violation of his rights to due
2 process.” *Id.* (alterations omitted).

3 The district court agreed, granting the habeas petition and ordering the
4 petitioner’s immediate release. *Id.* at *12. The court first determined that under
5 *Martinez*, 124 F.4th at 779–80, 783, “the question of whether a petitioner poses a
6 flight risk is a question of law that is reviewable by the Court.” *Id.* at *5. Thus,
7 “the Court has jurisdiction to review the Immigration Judge’s determination under
8 an abuse of discretion standard.” *Id.* True, the court “cannot reweigh evidence,”
9 but it could determine “whether the immigration judge ‘applied the correct legal
10 standard.’” *Id.* at *8 (quoting *Martinez*, 124 F.4th at 785). That included whether
11 the IJ “‘consider[ed] and address[ed] in its entirety the evidence submitted by a
12 petitioner’” and “‘issue[d] a decision that fully explains the [IJ’s] reasons.’” *Id.* at
13 *9 (quoting *Franco-Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006)).

14 The district court then concluded that the IJ “abused its discretion in
15 denying Miri’s bond.” *Id.* The court found that the IJ “did not describe which
16 *Martinez* factors were considered, if any, or what evidence was relied on.” *Id.* Nor
17 did the IJ “explain the reasons for denying Miri’s bond” or show that it “relied on
18 the appropriate factors.” *Id.* And the court held that the IJ’s “conclusory
19 statements about “red flags” and “factors working against Miri” did not provide
20 an adequate explanation for a finding of flight risk. *Id.* at *8. Thus, the district
21 court agreed that Mr. Miri’s detention was “fundamentally unfair and thus
22 violated the Due Process Clause of the Fifth Amendment.” *Id.* at *5.

23 Similarly, the district court in *Zheng v. Rokosky, et al.*, concluded that
24 “Petitioner’s bond hearing was fundamentally unfair and violated his due process
25 rights.” No. 26-CV-01689, 2026 WL 800203, at *5 (D.N.J. Mar. 23, 2026). It
26 explained that while it was “not permitted to re-weigh evidence or determine
27 credibility,” it must ensure that the IJ “applies the correct legal standard” and
28 “actually consider[s] the evidence and argument that a party presents.” *Id.* at *4, 5

1 (quotations omitted). But the court found that the IJ’s decision was “not supported
2 by any detail or reference to *any* factual evidence in the record.” *Id.* at *6. The
3 court noted that the IJ “did not provide even a minimal articulation of the basis of
4 her decision” but “simply stated in mere conclusory fashion that Petitioner was a
5 flight risk.” *Id.* The court thus held that this was “not an individualized
6 assessment. This was not a fundamentally fair bond hearing.” *Id.*

7 Here, as in these two cases, Mr. Rodriguez’s bond hearing was
8 “fundamentally unfair and violated his due process rights.” *Id.* at *5. First, the IJ
9 did not apply the “correct legal standard” because she “did not describe which
10 *Martinez* factors were considered, if any,” and never weighed Mr. Rodriguez’s
11 fixed address, length of residence, family ties, employment history, record of
12 court appearances, absence of criminal record beyond the 2022 DUI, and lack of
13 attempts to flee prosecution or immigration authorities. *Miri*, 2026 WL 622302, at
14 *8, 9. Instead, the IJ merely stated that “the respondent is a danger to the
15 community and is a flight risk. Thank you.” Ex. B at 3. And as in *Zheng*, the IJ
16 “did not provide even a minimal articulation of the basis of her decision” but
17 “simply stated in mere conclusory fashion that Petitioner was a flight risk.” 2026
18 WL 800203, at *6.

19 To be sure, the IJ did explain earlier that her tentative for *any* person with a
20 DUI conviction is to deny bond. *Id.* at 2. But that still poses two problems. First, it
21 does not consider the other *Martinez* factors, which were strong in this case.
22 Second, it creates a blanket rule that anyone with a DUI—even one that was four
23 years old—cannot get immigration bond. But that, too, conflicts with Ninth
24 Circuit and BIA precedent. “[A]n individual’s bond hearing fails to comport with
25 due process where an Immigration Judge relies on considerations that would lead
26 to an automatic denial of bond in all cases.” *Alvarado Lopez v. Dillman*, No. 1:25-
27 CV-2456 (LMB/LRV), 2026 WL 688958, at *6 (E.D. Va. Mar. 11, 2026)
28 (quoting *Argueta-Portillo v. Bondi, et al.*, 1:26-cv-122-MSN-LRV, Dkt. No. 16

1 (E.D. Va. Mar. 2, 2026)). After all, if the law wanted bond denied for every
2 person with a misdemeanor conviction, the BIA and Ninth Circuit would have
3 said so. Instead, they both directed immigration judges to balance various factors.
4 “[F]actors unique to each alien must be evaluated in determining suitability for
5 release on custody.” *In re Helia de la Cruz-Palencia*, 2011 WL 2261251, at *1
6 (BIA May 13, 2011) (unpublished).

7 Nor is it any answer that Mr. Rodriguez is, admittedly, in the country
8 unlawfully. “A noncitizen’s unlawful status cannot provide a legitimate
9 consideration upon which an Immigration Judge may deny a request for release
10 on bond under § 1226(a) given that every individual who appears before an
11 Immigration Judge for custody redetermination lacks lawful status. *Alvarado*
12 *Lopez v. Dillman*, No. 1:25-CV-2456 (LMB/LRV), 2026 WL 688958, at *6 (E.D.
13 Va. Mar. 11, 2026). “To consider this fact violates both § 1226(a)’s requirement
14 of an individualized hearing and fundamental due process principles.” *Id.* The
15 BIA similarly has cautioned against “[s]uch a broad interpretation of what
16 constitutes an “adverse factor” . . . [that] could result in requiring a bond of almost
17 every alien who is held in deportation proceedings.” *Matter of Patel*, 15 I. & N.
18 Dec. 666, 667 (BIA 1976); *see also Chavarria Mejia v. Crawford*, No. 26-cv-253-
19 LMB-LRV, 2026 WL 819603, at *5 (E.D. Va. Mar. 25, 2026); *Lemus Crispin v.*
20 *Bondi*, No. 26-cv-191-LMB-WEF, 2026 WL 768859, at *5–6 (E.D. Va. Mar. 18,
21 2026); *Segura v. Bondi*, No. 26-cv-304-LMB-WEF, 2026 WL 688862, at *6 (E.D.
22 Va. Mar. 11, 2026); *See also See N.A. v. Warden*, No. 25-cv-03007-MBK, 2026
23 WL 734587, at *8 (C.D. Cal. Feb. 20, 2026), *report and recommendation adopted*
24 *sub nom. N.A. v. Warden*, No. 25-cv-03007-MBK, 2026 WL 734585 (C.D. Cal.
25 Mar. 12, 2026) (opining that factors that are true of “virtually every asylum seeker
26 apprehended at the border” cannot meet the DHS’s burden to show flight risk).

27 Because the IJ did not apply the correct legal standard under *Martinez*,
28 Mr. Rodriguez’s bond hearing was fundamentally unfair and violated due process.

II. This Court should order Mr. Rodriguez's immediate release because Respondents violated his due process in originally detaining him.

Courts increasingly find that the best remedy for a botched bond hearing is to order the noncitizen's release. That especially is so where, as here, the noncitizen's original detention violated due process, too.

The court in *Zheng* similarly held that the petitioner's five-month detention had "become so unreasonable" that "the only just remedy in these circumstances is immediate release." *Id.* at *8. It explained that "Respondents have now violated Petitioner's due process rights twice: first when they initially detained him unlawfully under § 1225(b), and then again when they deprived him of a constitutionally adequate bond hearing." *Id.* It noted that "[c]ourts across the country confronting due process violations akin to that here have recognized that a new hearing would either be unnecessary, futile, or an inadequate remedy." *Id.* at *10 (collecting cases). Not only was the record "entirely devoid of any individualized justification for Petitioner's continued detention," there was no longer "any reason to believe that a second hearing would be fundamentally fair." *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, Mr. Rodriguez has been detained for even longer—more than seven months. And, his original detention violated due process, too. That is because Respondents detained Mr. Rodriguez without giving him any explanation or chance to explain himself, violating agency regulations and due process. *See Aldama v. Mullin*, No. 26-CV-0897-BJC-JLB, 2026 WL 962657, at *1 (S.D. Cal. Apr. 9, 2026); *Noori v. LaRose*, 807 F. Supp. 3d 1146, 1167 (S.D. Cal. 2025). Even if Mr. Rodriguez's prior DUI may have constituted a violation of parole, Respondents were well aware of that DUI when they ordered him to start checking in with an

1 ICE officer in 2022. Thus, the DUI cannot be the basis for the revocation of his
2 parole. Rather, parole can only be terminated “‘upon accomplishment of the
3 purpose for which parole was authorized’ or ‘when ... neither humanitarian reasons
4 nor public benefit warrants the continued presence of the alien in the United States,
5 parole shall be terminated upon written notice to the alien and he or she shall be
6 restored to the status that he or she had at the time of parole.’” *Noori*, 807 F. Supp.
7 3d at 1167 (quoting 8 C.F.R. § 212.5(e)). Those conditions were not met here.

8 As in *Zheng*, his detention has “become so unreasonable” that “the only just
9 remedy in these circumstances is immediate release.” *Id.* at *8. This is because Mr.
10 Rodriguez’s bond hearing was “entirely devoid of any individualized justification”
11 for his continued detention” such that there is no “reason to believe that a second
12 hearing would be fundamentally fair.” *Id.* at *10. Just as in *Zheng*, Respondents
13 were “given an opportunity to cure their earlier constitutional violation by
14 providing [Mr. Rodriguez] a fundamentally fair bond hearing” but “woefully failed
15 to do so,” and this Court should decline to give them a “third bite at the apple.” *Id.*
16 at *11. Indeed, even if this Court concludes that Mr. Rodriguez’s bond hearing
17 complied with due process, it could still order Mr. Rodriguez’s immediate release
18 for these earlier due process violations. *See Noori*, 807 F. Supp. 3d at 1169; *Aldama*,
19 2026 WL 962657, at *1. It should do so if need be.

20 What is more, courts increasingly find release is the best solution to an
21 unlawful bond hearing even when the original detention did not amount to a
22 due process violation. In *Miri*, for example, the court ordered the petitioner’s
23 “prompt release” and prohibited the government from redetaining him “absent
24 compliance with due process and his legal protections.” 2026 WL 622302, at
25 *11. The court found this to be “the remedy that will best return Miri to the
26 status quo and restore his position as it was prior to the detention.” *Id.*; *see*
27 *also Hernandez-Garcia v. Warden*, No. 26-cv-1248-JO-BLM, ECF No. 11
28 (Mar. 26, 2026); *Izquierdo Mendez v. Casey*, No. 26-cv-1731-JO-SBC, ECF

1 No. 6 (Mar. 30, 2026).

2 Release also is appropriate given with recent news reports showing that IJ's
3 have been directed—either directly or indirectly—not to grant noncitizens bond.
4 An alarming report from The New York Times documents not just how
5 Respondents have purged IJs seen as insufficiently supportive of the President but
6 also discourage those IJs who remain from granting bond. For example, the chief
7 immigration judge now “receive[s] daily reports about bond rulings.” Nicholas
8 Nehamas et al., *Immigration Judges Are Purged as Trump Speeds Deportations*,
9 N.Y. Times, April 12, 2026, at A1.² “Her office has sometimes emailed judges
10 asking for an explanation about their decisions to grant bond,” while there is no
11 indication that she seeks explanation for the denial of bond. *Id.*

12 The message is clear. As one IJ told the Times, “the “pressure to deny bond
13 is overt.” *Id.* That IJ explained that “there was a requirement to inform a
14 supervisor every time bond was granted, underscoring how closely the
15 administration was monitoring decisions.” *Id.*

16 **CLAIM AND PRAYER FOR RELIEF**

17 For these reasons, this Court should grant Mr. Rodriguez’s habeas petition
18 and order his immediate release. Should this Court decline to order immediate
19 release, it should at a minimum order a new bond hearing in front of a different IJ.
20

21 Respectfully submitted,

22 Dated: May 21, 2026

23 *s/ Daniel J. Yadron, Jr.*

24 **DANIEL J. YADRON, JR.**

25 Federal Defenders of San Diego, Inc.

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27
28 ² The article is available at <https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html>