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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 HERNANDEZ-HERNANDEZ,
10 CLAUDIO
11 Petitioner,

CIVIL CASE NO.:
26-cv-02689-CAB-SBC

12 v.

13 CHRISTOPHER LAROSE, et al.,
14 Respondents.

PETITIONER'S TRANVERSE

Agency No: 

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18 PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN AND
19 REQUEST FOR IMMEDIATE RELEASE

20 Petitioner Claudio Hernandez-Hernandez respectfully submits this
21 Traverse in response to Respondents' Return. For the reasons set forth below, the
22 Petition should be granted and Petitioner should be immediately released from
23 custody.

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25 **I. PROCEDURAL HISTORY AND STATEMENT OF FACTS**

26 Petitioner Claudio Hernandez-Hernandez was arrested by ICE on
27 November 14, 2025 while taking his 12-year-old son to school. Officers yelled at
28 him, threatened to break his car window, handcuffed him immediately, searched

1 him, seized his wallet and phone, moved his car with the key inside, and refused
2 to show a warrant. He cooperated fully and did not resist. Petitioner was processed
3 at the downtown ICE ERO office and transferred to Otay Mesa Detention Center,
4 where he remains detained.

5 His declaration describes the arrest as warrantless, aggressive, and
6 unsupported by reasonable suspicion. His wife's declaration corroborates the
7 family's reliance on him for financial and emotional support and describes the
8 hardship caused by his detention.

9 Once he was arrested, he was detained at Otay Mesa Detention Center.
10 DHS placed Petitioner in removal proceedings under 8 U.S.C. § 1229a, charging
11 him under § 1182(a)(6)(A)(i).

12 On February 9, 2026, Judge Bencivengo granted Petitioner's first habeas
13 petition and ordered Respondents to provide a § 1226(a) bond hearing.
14 Respondents conceded Petitioner is detained under § 1226(a).

15 On February 12, 2026, in accordance with the order of this honorable court,
16 an immigration court held a bond proceeding. DHS introduced only the Order of
17 this Court as evidence in that bond proceeding.

18 At the hearing on February 12, 2026, Judge Olga Attia denied bond to
19 every detainee, including Petitioner. The DAR reveals significant shortcomings
20 in the bond proceeding that unfortunately warrant further Constitutional oversight
21 by this court. Among the violations of due process were the reversal of the burden
22 of proof, an unlawful presumption of detention, refusal to consider evidence, and
23 corruption of the record, known as the Digital Audio Recording ("DAR").

24 On April 21, 2026, IJ Leah O'Brien issued a removal order which is
25 introduced by Respondents in evidence. After this date, Petitioner timely filed a
26 BIA appeal on May 5, 2026, which remains pending.

1 Petitioner filed this present habeas petition on April 27, 2026, challenging
2 the defective bond hearing including the misapplication of the burden of proof,
3 DAR corruption, the lack of evidence introduced by the Respondent.

4 Petitioner remains detained at Otay Mesa, where conditions are harsh and
5 medically inadequate. His wife's declaration describe the severe impact on their
6 family. *See* Exhibit 1. Petitioner's and his wife's declarations describe
7 overcrowding, inadequate medical care, psychological distress, family hardship,
8 and severe financial strain. *See also* Exhibit 2. These conditions constitute
9 ongoing irreparable harm such that immediate release is the appropriate
10 remedy. Therefore, the discretionary detention procedures of § 1226 govern
11 Petitioner's detention, and the Petition must be granted.

12 13 II. LEGAL STANDARD

14 District courts in the Ninth Circuit and across the country regularly grant
15 detained noncitizen habeas petitioners release under adequate conditions of
16 supervision when the government fails to provide them with a hearing consistent
17 with prior orders of the court. *See, e.g., Mau v. Chertoff*, 562 F. Supp. 2d 1107,
18 1119 (S.D. Cal. 2008) (ordering petitioner's release when "the evidence before
19 the IJ failed, as a matter of law, to prove flight risk or danger pursuant to the
20 Court's order"); *Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827,
21 at *7 (N.D. Cal. Sept. 20, 2017) (ordering petitioner's release under appropriate
22 conditions of supervision when IJ failed to correctly apply clear and convincing
23 standard in violation of court order); *Ramos v. Sessions*, 293 F. Supp. 3d 1021,
24 1036 (N.D. Cal. 2018), vacated and remanded sub nom. *Ramos v. Garland*, No.
25 18-15884, 2024 WL 933654 (9th Cir. Mar. 1, 2024) (granting motion to enforce
26 and ordering release under appropriate conditions of supervision when
27 government failed to meet clear and convincing burden).

1 Federal courts have jurisdiction to review whether the agency properly
2 applied the burden of proof. *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024).
3 The agency abuses its discretion when it acts “arbitrarily, irrationally, or contrary
4 to the law” and when it “fails to provide a reasoned explanation for its actions.”
5 *Tadevosyan v. Holder*, 743 F.3d 1250, 1252–53 (9th Cir. 2014). The agency also
6 abuses its discretion where it fails to consider probative evidence. *Franco-*
7 *Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006). A “standard of review
8 which asks only whether the IJ announced the correct legal standard is
9 insufficient.” *Ramos*, 293 F. Supp. 3d at 1030. See *Nat’l Res. Def. Council, Inc.*
10 *v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016) (“An agency acts contrary to the
11 law when it gives mere lip service or verbal commendation of a standard but then
12 fails to abide the standard in its reasoning and decision.”

13 Here, Petitioner received a Constitutionally deficient hearing. To address
14 Respondent’s claims of mootness and failure of claims about the violation of
15 Petitioner’s Fourth Amendment rights, Petitioner asserts a defective hearing does
16 not moot a habeas petition. Petitioner remains detained and his BIA appeal is
17 pending. This petition challenges new constitutional violations that arose after the
18 first habeas in the very bond hearing that was to address the Due Process
19 violations of the arrest and detention. Petitioner argues this habeas is ripe for
20 adjudication and respectfully request this Court’s order directing his release on
21 the argument below.

22 23 **III. ARGUMENT**

24 **Respondents Violated the Court’s Order When the IJ Erroneously Denied**
25 **Bond Despite DHS’s Failure to Prove Present Danger and Flight Risk by**
26 **Clear and Convincing Evidence, and this Court Should Order Petitioner**
27 **Released.**
28

A. The Clear and Convincing Standard is a Heavy Burden that Must be Demonstrated in Fact, Not in Theory, Because the Loss of Freedom from Confinement is Significant.

The clear and convincing standard requires that evidence must establish “an abiding conviction that the truth of [the] factual contentions at issue is highly probable.” *Mondaca-Vega v. Lynch*, 808 F.3d 413, 422 (9th Cir. 2015) (en banc). This standard sets a “high burden and must be demonstrated in fact, not ‘in theory.’” *Obregon v. Sessions*, No. 17-CV-01463-WHO, 2017 WL 1407889, at *7 (N.D. Cal. Apr. 20, 2017) (quoting *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991) (affirming the district court’s conclusion that, although the government intimidating and highly dangerous character,” it had failed to show that “this Boss posed a significant danger”)).

The clear and convincing standard is used “because it is improper to ask the individual to share equally with society the risk of error when the possible injury to the individual— deprivation of liberty—is so significant.” *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011) (cleaned up). “Rather, when a fundamental right, such as individual liberty, is at stake, the government must bear the lion’s share of the burden.” *Tijani v. Willis*, 430 F.3d 1241, 1245 (9th Cir. 2005) (Tashima, J., concurrence). Indeed, “[d]eprivation of liberty should be a rare circumstance for non-citizens in immigration detention, reserved only for those who are a threat to national security or poor bail risks.” *Obregon*, 2017 WL 1407889 at *9. In the context of criminal pretrial detention, the Supreme Court has provided that the clear and convincing evidence standard requires the government to prove that the detained person “presents an identified and articulable threat to an individual or the community,” and “no conditions of release can reasonably assure the safety of the community or any person.” *United States v. Salerno*, 481 U.S. 739, 750-51 (1987).

1 In *Matter of Guerra*, the BIA established several factors the IJ should
2 consider when assessing an individual's risk of flight and dangerousness,
3 including:

4 (1) whether the immigrant has a fixed address in the United States; (2) the
5 immigrant's length of residence in the United States; (3) the immigrant's family
6 ties in the United States, (4) the immigrant's employment history, (5) the
7 immigrant's record of appearance in court, (6) the immigrant's criminal record,
8 including the extensiveness of criminal activity, the recency of such activity, and
9 the seriousness of the offenses, (7) the immigrant's history of immigration
10 violations; (8) any attempts by the immigrant to flee prosecution or otherwise
11 escape from authorities; and (9) the immigrant's manner of entry to the United
12 States. 24 I & N Dec. 36, 40 (BIA 2006). The decision was made in the context
13 of discretionary relief under 8 U.S.C. § 1226(a) and establishes the floor for
14 factors to consider in immigration custody determinations.

15 More specifically regarding a dangerousness determination, even where an
16 individual has been convicted of a criminal offense, criminal history "alone will
17 not always be sufficient to justify denial of bond on the basis of dangerousness."
18 *Singh*, 638 F.3d at 1206. The "extensiveness of criminal activity, the recency of
19 such activity, and the seriousness of the offenses" are also contemplated. *Matter*
20 *of Guerra*, 24 I & N Dec. at 40. Courts must also consider the "remoteness" of the
21 criminal activity as well as "intervening events that might undermine a finding of
22 dangerousness." *Obregon*, 2017 WL 1407889, at *7 (collecting cases).

23 Federal courts have jurisdiction to review whether the agency properly applied
24 the burden of proof. *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024)
25 (asserting jurisdiction over whether the immigration judge applied the correct
26 burden of proof). The Court in *Martinez* further noted that where the agency
27 decision raises "red flags," it need not take the agency "at its word" that it applied
28 the correct standard. *Id.* A "red flag" indicates that something is "amiss," such as

1 where the agency misstates the record, fails to mention probative and potentially
2 dispositive evidence, or fails to mention or apply relevant case law in its decision.
3 *Id.* at 1230-31 (citing *Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011)). Where,
4 “there is any indication that the agency did not consider all the evidence before it,
5 a catchall phrase does not suffice, and the decision cannot stand. See *Cole*, 659
6 F.3d at 771.

7 Here, the immigration judge clearly states on the record that the standard
8 applied was the burden of proof was on the respondent. On the DAR at 00:02:45
9 the Immigration Judge states: “so it would appear that the burden would be on the
10 respondent to show no flight risk or danger to the community, would that be
11 correct Mr. Musser?” See Exhibit 3 (bolded for emphasis). As this is a violation
12 of due process procedurally, it is not necessary to address the remainder of how
13 the bond hearing was not conducted in a manner to afford the Petitioner due
14 process, but briefly, Petitioner will lay out other potential deficits to be
15 comprehensive in the presentation of claims. Petitioner challenges the standard
16 applied as prima facie defective per the Due Process clause. *Mathon v. Searls*,
17 623 F. Supp. 3d 203, 214 (W.D.N.Y. 2022). See *infra* Section I.B (standard) and
18 Sections I.C-I.D (evidentiary burden).

19 After the incorrect standard was applied, it should also be noted that no
20 evidence was entered by DHS in the administrative record at all. Thus, if the
21 correct standard had been applied, the lack of evidence would be a fatal blow to
22 DHS meeting its requirements per the due process clause. Additionally, the
23 Petitioner did offer affirmative evidence of the *Matter of Guerra* factors generally
24 considered in bond proceedings, but those did not appear in the administrative
25 record either.

26 Because of this incorrect burden of proof, and other errors in the bond
27 hearing, Petitioner’s continued detention violates the Constitution, the INA, and
28 the APA. Petitioner contends that immediate release is the appropriate remedy.

1 *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash.2025)
2 (“Although the Government notes that Petitioner may request a bond hearing
3 while detained, such a post-deprivation hearing cannot serve as an adequate
4 procedural safeguard because it is after the fact and cannot prevent an erroneous
5 deprivation of liberty.”); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055
6 (N.D. Cal. 2021) (“if Petitioner is detained, he will already have suffered the
7 injury he is now seeking to avoid”); *Domingo v. Kaiser*, Case No. 25-cv-05893
8 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) (“Even if Petitioner[]
9 received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was
10 released at that point, he will have already suffered the harm that is the subject of
11 his motion; that is, his potentially erroneous detention.”).

12 Respondents’ Return does not address or rebut the core defects in the
13 February 12, 2026 bond hearing including the incorrect burden of proof, lack of
14 any evidence in the record available through ECAS, and the DAR corruption
15 which collectively demonstrates, at the minimum the government’s failure to
16 conduct a Constitutionally appropriate bond hearing, in line with this Court’s
17 previous order.

18 **B. Ultimately the February 12, 2026 Bond Hearing Further Violated**
19 **Due Process and No Exhaustion is Required or Possible**

20 As noted above, in the bond hearing ordered by this Court, he IJ applied
21 the incorrect burden of proof, applied a presumption of detention, and did not
22 adequately consider available evidence. In making the argument herein, Petitioner
23 utilized the DAR which is the administrative record of what occurred at the
24 hearing. The DAR itself has various audio corruptions where words appear
25 warbled and audio tracks from the immigration judge, DHS counsel, and
26 Petitioner are occurring all at once, effectively making the record less than fully
27 transparent.
28

1 If, in the present case, the Petitioner had a duty to exhaust remedies with the
2 BIA in appealing this decision as Respondent submits, it would be impossible. The
3 corrupted DAR files would make it impossible to adequately challenge the hearing
4 itself as large portions are not able to be reviewed fully.

5 Additionally, in the Ninth Circuit, exhaustion of administrative remedies in
6 § 2241 immigration habeas cases is prudential, not jurisdictional. *Singh v. Holder*,
7 638 F.3d 1196, 1203 n.3 (9th Cir. 2011). Courts routinely waive exhaustion where,
8 as here, the petitioner challenges the legality of the bond procedures themselves,
9 because the BIA lacks authority to remedy structural due process violations, to
10 correct a corrupted DAR, or to enforce the *Maldonado Bautista* declaratory
11 judgment. See *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).
12 Exhaustion is also excused where administrative remedies are inadequate, futile, or
13 unavailable. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Because
14 the BIA cannot provide the relief sought, exhaustion is not required.

16 CONCLUSION AND RELIEF REQUESTED

17 For the reasons above, Petitioner respectfully requests:

- 18 1. Immediate release from custody; or
- 19 2. Adequate remedy this Court deems Constitutionally sufficient.

20
21 Respectfully submitted,

22 /s/Caroline Matthews
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24 120 Stevens Avenue
25 Solana Beach, CA 92075
26 CA Bar # 285754
27 *Pro Bono Attorney for Petitioner*

dated: May 11, 2026

28 UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HERNANDEZ-HERNANDEZ,
CLAUDIO
Petitioner,

CIVIL CASE NO.:
26-cv-02689-CAB-SBC

[PROPOSED] ORDER

v.

CHRISTOPHER LAROSE, et al.,
Respondents.

The Court finds that:

The February 12, 2026 bond hearing was constitutionally defective;
The DAR is corrupted and incomplete; and
Respondents' actions constitute abuse of discretion and structural due process violations; and
Petitioner's continued detention is unlawful.

IT IS ORDERED:

1. The Petition for Writ of Habeas Corpus is GRANTED.
2. Respondents shall IMMEDIATELY RELEASE Petitioner Claudio Hernandez-Hernandez.
3. Respondents are ENJOINED from re-detaining Petitioner under § 1225(b)(2).
4. The Court retains jurisdiction to enforce this Order.

Dated: _____, 2026

Hon. Cathy Ann Bencivengo

United States District Judge

EXHIBIT 1

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DECLARATION OF HILDEGARDA MORALES

I, Hildegarda Morales, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. My name is Hildegarda Morales. I am over the age of 18 and competent to make this declaration. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

2. On February 12, 2026, I attended virtually the immigration bond hearing for Claudio Hernández Hernández before Immigration Judge Olga Attia at Otay Mesa Immigration Court.

3. During the bond hearing, Immigration Judge Attia did not appear to fully consider the positive factors presented in the case in support of Claudio Hernández Hernández's release on bond.

4. Rather than reviewing and considering the evidence that had been submitted on behalf of Claudio Hernández Hernández, Immigration Judge Attia focused her questioning on whether he had a driver's license. The evidence submitted in support of the bond request was not meaningfully addressed during the hearing.

5. Claudio Hernandez Hernandez does not have a criminal record and has never tried to hide from Immigration authorities.

6. Several letters of support were made in support of Claudio Hernandez Hernandez and were not factored into his case.

7. Claudio Hernández Hernández has many community ties in the community. He is not a flight risk.

8. He has a 12-year-old son who needs him and for whom he is responsible.

9. I am a U.S citizen and have filed an immigration petition for my husband, Claudio Hernandez Hernandez, submitted as evidence to show he is not a flight risk.

10. Claudio Hernandez Hernandez's primary residence since 1999 has been in the United States and has not changed address since 2017, further evidencing that he is not a flight risk.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: May 2, 2026

At: Vista, California

A black rectangular box with a white 'X' drawn across it, used to redact the signature of the declarant.

Hilda Morales, Declarant

Hilda Regardg

HM

EXHIBIT 2

DECLARATION OF CLAUDIO HERNÁNDEZ HERNÁNDEZ:

1. I, Claudio Hernández Hernández, declare that I have been detained at the Otay Mesa Detention Center for five months and one week.
2. ICE detained me on November 14, 2025, in Vista, California, near my home, after I dropped my son off at school. ICE agents followed me to the school before detaining me.
3. The food provided in detention is extremely poor. I have not been given any fruit during my entire detention.
4. In my previous unit, lunch was often served at 2:00 PM or even 3:00 PM, despite the posted schedule of 12:00 PM.
5. Dinner was served around 7:00 PM instead of the scheduled 5:00 PM.
6. The drinking water tastes bad and causes stomach discomfort.
7. Some guards treat detainees with disrespect. When we request basic hygiene items such as toilet paper or soap, they often refuse or delay providing them.
8. Certain officers insult or yell at detainees, acting as though they are superior to us.
9. I was moved from a pod/unit into a small cell where we are locked in during count time and throughout the night until 5:00 AM.
10. Since this transfer, I have experienced anxiety, depression, and constipation due to the confinement and the extremely small size of the cell.
11. I have lived in the United States for 26 years and have never been in a jail cell before.
12. Since being moved to the new unit, I have not received visits from my wife or my 12-year-old son because visiting hours are too late—Sundays at 6:00 PM.
13. My wife does not drive at night due to her vision, and my son continues to ask her to bring him to see me.
14. The bathrooms and showers are in terrible condition, and the area is very cold.
15. On Sundays, detainees are kept locked in, supposedly due to outside protests.
16. I have not slept well since being moved. The metal beds and thin, old mattresses cause significant back pain.

17. I have never committed a crime in the United States.

18. I have always worked to provide a better life for my wife and children. I am the primary provider for my household.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Name: Claudio Hernández Hernández