

1 Bashir Ghazialam (CA Bar No. 212724)
2 LAW OFFICES OF BASHIR GHAZIALAM
3 P.O. Box 928167
4 San Diego, California 92192
5 Tel: (619) 795-3370
6 Fax: (866) 685-4543
7 bg@lobg.net

8 Attorneys for Petitioner

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 XIAOYAN YU,

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, et al.,

15 Respondents.

Case No.: 26-cv-2910-CAB-GC

**PETITIONER'S NOTICE OF
MOTION AND MOTION TO
ENFORCE JUDGEMENT;
MEMORANDUM OF
POINTS AND AUTHORITIES**

PER CHAMBERS RULES, NO ORAL
ARGUMENT UNLESS SEPARATELY
ORDERED BY THE COURT

Date: August 21, 2026

Time:

Before: Honorable Judge Cathy Ann
Bencivengo

Immigration Habeas Case

NOTICE OF MOTION AND MOTION

Petitioner, Xiaoyan Yu, by and through undersigned counsel, respectfully moves the Court to enforce its June 3, 2026 and June 5, 2026 orders, requiring Respondents to provide Petitioner with a bond hearing. Petitioner challenges the adequacy of the bond hearing under the standards set forth in the Court's orders and was constitutionally defective. Per Chamber Rules, there will be no oral argument unless separately ordered by the Court.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities.

As set forth in the Points and Authorities in support of this Motion, Petitioner establishes that the IJ's danger finding is conclusory and fails the *Martinez* standard, the flight risk finding lacks individualized analysis, the IJ failed to consider and address all evidence, and Petitioner's lawful permanent status and pending applications are mitigating factors that the IJ failed to address. Because Respondents failed to provide an adequate hearing under the standards set forth by this Court's orders as well as the Constitution, Petitioner respectfully submits that the Court enjoin Yu's continued detention and order his immediate releases, or in the alternative, order a new bond hearing at which the government bears the burden of proof by clear and convincing evidence.

WHEREFORE, Petitioner prays that this Court grant his Motion to Enforce the judgment issued by this Court and order his immediate release from unlawful detention,

1 or in the alternative, order a new bond hearing at which the government bears the burden
2 of proof by clear and convincing evidence.

3 Dated: July 17, 2026,

Respectfully submitted,

4 By: /s/ Bashir Ghazialam
5 Bashir Ghazialam
6 Attorney for Petitioner
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION
TO ENFORCE JUDGEMENT**

I. The IJ's Danger Finding Is Conclusory and Fails the *Martinez* Standard

This Court's own order directed that the government bear the burden of establishing by clear and convincing evidence that Yu poses a danger to the community. *See Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024) (confirming that "the government bore the burden to establish by clear and convincing evidence that [the petitioner] is a danger to the community"). The IJ's analysis does not satisfy this standard.

The IJ acknowledged the money laundering conviction is "generally a nonviolent crime" but concluded it "endangers vulnerable members of the community and their ability to support themselves." This reasoning is theoretical, not factual. *Dkt. 8-1*.

The clear-and-convincing standard requires "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). As the Northern District of California has explained, "establishing dangerousness by 'clear and convincing evidence' is a high burden and must be demonstrated in fact, not 'in theory.'" *Obregon v. Sessions*, No. 17-cv-01463-WHO, 2017 WL 1407889, at *20 (N.D. Cal. Apr. 20, 2017) (citing *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991) (affirming the district court's conclusion that, although the government had demonstrated the defendant was a Mafia Boss and that "in theory a Mafia Boss was an intimidating and highly dangerous character," it had failed to show that "this Boss posed a significant danger"))).

1 The same clear-and-convincing standard applies in this District. *See Sadeqi v.*
2 *LaRose*, 809 F. Supp. 3d 1090, 1095 (S.D. Cal. 2025) (stating that "the government bore
3 the burden to establish by clear and convincing evidence that [the petitioner] is a danger
4 to the community" (*citing Martinez*, 124 F.4th at 785–86)). And the Central District of
5 California has confirmed that this standard "requires the Government to present evidence
6 to establish 'an abiding conviction that the truth of [the] factual contentions at issue is
7 highly probable.'" *Zakharenkova v. Mullin*, No. EDCV 26-2353-AS, 2026 U.S. Dist.
8 LEXIS 124195, at *5 (C.D. Cal. May 19, 2026) (quoting *Mondaca-Vega*, 808 F.3d at
9 422).

11 In *Zakharenkova*, the court found that a bond hearing was legally insufficient
12 where the IJ issued only a "boilerplate form order" denying bond because the petitioner
13 was a "[d]anger to the community" with "no information about the basis for this finding
14 or the standard that was applied." 2026 U.S. Dist. LEXIS 124195, at *6. The same
15 deficiency is present here. The IJ's reasoning—that a past nonviolent financial conviction
16 creates ongoing danger to the community—is the kind of theoretical leap that *Martinez*
17 and its progeny reject. Under *Martinez*, the government must present individualized
18 evidence that the noncitizen poses a current danger, not merely point to a prior
19 conviction. *See Martinez*, 124 F.4th at 785–86.

21 **II. The Flight Risk Finding Lacks Individualized Analysis**

22 The IJ's flight risk analysis is equally thin: "his disregard for the laws of the United
23 States are strong evidence of flight risk as well under the Guerra factors." *Id.* This is a

1 conclusory leap from financial crime to flight propensity without any evidence of actual
2 absconding, missed appearances, or similar conduct.

3 Under an abuse of discretion standard, "courts cannot reweigh evidence but can
4 only determine whether the Board of Immigration Appeals applied the correct legal
5 standard." *Martinez*, 124 F.4th at 785; see also *id.* at 784 (Cf. *Konou v. Holder*, 750 F.3d
6 1120, 1127 (9th Cir. 2014) (applying abuse of discretion standard to determination of
7 whether an alien was convicted of a particularly serious crime)). An IJ "abuses its
8 discretion when its decision is arbitrary, irrational, or contrary to law." *Pleitez-Lopez v.*
9 *Barr*, 935 F.3d 716, 719 (9th Cir. 2019) (*quoting Avagyan v. Holder*, 646 F.3d 672,
10 678 (9th Cir. 2011)).

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12 The District of New Jersey recently found a bond determination constitutionally
13 deficient where the IJ concluded the petitioner posed a flight risk without providing
14 individualized reasoning. *Haiguang Zheng v. Rokosky*, No. 26-cv-01689, 2026 U.S. Dist.
15 LEXIS 60485, at *16 (D.N.J. Mar. 23, 2026). The court explained that "there is no way
16 for the Court to even trace the path of the IJ's analysis because there was no analysis,"
17 and that "[t]hat is not an individualized assessment." *Id.* The court further noted that the
18 IJ's decision "contains zero reference to any record or arguments put forth by either
19 party." *Id.* (*quoting Rodriguez v. Greene*, No. 26-0333, 2026 U.S. Dist. LEXIS 41849,
20 2026 WL 574961, at *12 (N.D. Ohio Mar. 2, 2026)).

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22 Here, the IJ's flight risk finding suffers from the same deficiency. The IJ pointed to
23 Yu's prior conviction as "strong evidence of flight risk" without identifying any evidence

1 of actual absconding behavior, missed court appearances, or failure to comply with
2 supervision. This is not the kind of individualized assessment that the law requires.

3 The Central District of California reached the same conclusion in *Miri v. Bondi*,
4 where the immigration judge denied bond based on "too many red flags" and "a number
5 of [] factors working against the [petitioner] as it relates to the flight risk" without
6 identifying which factors were considered or what evidence was relied upon. No.
7 5:26-cv-00698-MEMF-MAR, 2026 U.S. Dist. LEXIS 46944, at *24 (C.D. Cal. Mar. 5,
8 2026). The court found that the IJ "did not explain the reasons for denying [the
9 petitioner's] bond" and "did not describe which Martinez factors were considered, if any,
10 or what evidence was relied on." Id. at *26. The court concluded that "the Immigration
11 Judge abused its discretion in denying [the] bond." Id. at *26.

13 **III. The IJ Failed to Consider and Address All Evidence**

14 The IJ acknowledged Yu has family with status in the United States but dismissed it in
15 a single conclusory line: "these convictions outweigh the other *Guerra* factors." This is
16 insufficient.

17 The Ninth Circuit has held that an immigration judge "abuses its discretion when it
18 fails to 'consider and address in its entirety the evidence submitted by a petitioner' and to
19 'issue a decision that fully explains the reasons for denying a motion to reopen.'" *Franco-*
20 *Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006) (quoted in *Miri*, 2026 U.S. Dist.
21 LEXIS 46944, at *25); see also *Barrera-Leyva v. Immigr. & Naturalization Serv.*, 653
22 F.2d 379, 380 (9th Cir. 1981) (stating that the immigration judge abused its discretion by
23

1 "failing to consider all of the relevant factors") (*cited in Miri*, 2026 U.S. Dist. LEXIS
2 46944, at *26).

3 In *Miri*, the court found an abuse of discretion because "the Immigration Judge did
4 not explain the reasons for denying *Miri*'s bond. The Immigration Judge did not describe
5 which *Martinez* factors were considered, if any, or what evidence was relied on." 2026
6 U.S. Dist. LEXIS 46944, at *26. The same deficiency is present here. The IJ's single-line
7 dismissal of Yu's family ties—without identifying which *Guerra* factors were weighed,
8 what weight was assigned to each, or why the convictions "outweigh" the mitigating
9 evidence—fails to satisfy the requirement that the IJ "consider and address in
10 its entirety the evidence submitted." *Franco-Rosendo*, 454 F.3d at 966.

11 Yu's pending adjustment of status and § 212(h) waiver applications are mitigating
12 evidence that he has compelling reasons to remain in the United States and appear for all
13 proceedings—the opposite of flight risk. The IJ did not address these applications at all.
14 Under *Martinez*, the immigration judge must evaluate the petitioner's "mitigating
15 evidence, such as his successful pre-incarceration release on bond, the district court's
16 statements during sentencing, his efforts at rehabilitation, his family ties, and his strong
17 community support." *Martinez*, 124 F.4th at 780–81. The IJ's failure to address Yu's
18 pending applications—or to explain why they were insufficient to warrant bond—is the
19 kind of failure to "consider and address in its entirety the evidence submitted" that
20 constitutes an abuse of discretion. *See Franco-Rosendo*, 454 F.3d at 966; *Miri*, 2026 U.S.
21 Dist. LEXIS 46944, at *26.

1 **IV. Yu's LPR Status and Pending Applications Are Mitigating Factors the IJ**
2 **Failed to Address**

3 Yu's history as a lawful permanent resident is a powerful mitigating factor that the
4 IJ barely addressed. LPR status reflects a long-standing lawful presence and ties to the
5 community—factors directly relevant to the *Martinez/Guerra* factors including length of
6 residence, family ties, and employment history. *See Martinez*, 124 F.4th at 783 (listing
7 factors an immigration judge may consider, including "the [noncitizen's] length of
8 residence in the United States," "the [noncitizen's] family ties in the United States, and
9 whether they may entitle the alien to reside permanently in the United States in the
10 future," and "the [noncitizen's] employment history").

11 In *Martinez*, the Ninth Circuit found no abuse of discretion where the IJ at least
12 "evaluated [the petitioner's] mitigating evidence, such as his successful pre-incarceration
13 release on bond, the district court's statements during sentencing, his efforts at
14 rehabilitation, his family ties, and his strong community support." 124 F.4th at 780–81.
15 Here, by contrast, the IJ did not evaluate Yu's mitigating evidence at all. The IJ's
16 conclusory statement that "these convictions outweigh the other *Guerra* factors" does not
17 constitute the kind of individualized assessment that *Martinez* requires.

18 Moreover, Yu's pending adjustment of status and § 212(h) waiver applications
19 demonstrate that he has ongoing, legally cognizable interests in remaining in the United
20 States and appearing for all proceedings. The IJ's failure to address these applications—or
21 to explain why they do not mitigate flight risk or danger—constitutes a failure to
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1 "consider and address in its entirety the evidence submitted by a petitioner." *Franco-*
2 *Rosendo*, 454 F.3d at 966 (quoted in *Miri*, 2026 U.S. Dist. LEXIS 46944, at *25). As the
3 court held in *Miri*, an IJ who does not "describe which *Martinez* factors were considered,
4 if any, or what evidence was relied on" commits an abuse of discretion. 2026 U.S. Dist.
5 LEXIS 46944, at *26.

6 **V. Conclusion**

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8 For the foregoing reasons, the IJ's bond determination was arbitrary, irrational, and
9 contrary to law as well as the U.S. Constitution. The government failed to meet its burden
10 of establishing by clear and convincing evidence that Yu poses a danger to the
11 community or a flight risk. The IJ's danger finding was conclusory and theoretical; the
12 flight risk finding lacked individualized analysis; and the IJ failed to consider and address
13 mitigating evidence including Yu's LPR status, family ties, and pending applications. The
14 Court should enjoin Yu's continued detention and order his immediate releases, or in the
15 alternative, order a new bond hearing at which the government bears the burden of proof
16 by clear and convincing evidence.

17 Dated: July 17, 2026,

Respectfully submitted,

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19 By: /s/ Bashir Ghazialam

Bashir Ghazialam

20 Attorney for Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

By: /s/ Bashir Ghazialam
Bashir Ghazialam