

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Y.S.G. v. Tonya Andrews, et al.

Y.S.G. v. Tonya Andrews, No. 2:25-cv-1884-SCR (E.D. Cal. Oct. 22, 2025) · No. No. 2:25-cv-1884-SCR ·
Decided October 22, 2025

SUMMARY

The United States District Court for the Eastern District of California considers a federal immigration detainee’s motion to enforce a preliminary injunction and the respondents’ motion to dismiss his 28 U.S.C. § 2241 habeas petition as moot. The court addresses whether the petitioner’s subsequent redetention and bond hearing complied with the injunction, which required release, notice of the reasons for revocation, and a hearing at which the government bears the clear-and-convincing-evidence burden regarding danger or flight risk. The excerpt indicates that the court denies dismissal and grants the motion to enforce, ordering the respondents to release the petitioner and not redetain him absent a compliant bond hearing.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	October 22, 2025
DOCKET	No. 2:25-cv-1884-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner, a federal immigration detainee, sought habeas relief under 28 U.S.C. § 2241 and moved to enforce a preliminary injunction requiring notice and a constitutionally adequate bond hearing before redetention. Respondents moved to dismiss the petition as moot and for failure to exhaust administrative remedies.
STANDARD OF REVIEW	For review of the immigration judge’s detention determination, abuse of discretion, limited to whether the immigration judge applied the correct legal standard and whether the decision reflects clear legal error or is unsupported by sufficient evidence. Pure questions of law are reviewed de novo. For enforcement of the preliminary injunction, petitioner had to show clearly and convincingly that respondents violated a specific provision of the injunction.

PRECEDENTIAL VALUE	unpublished district court order; nonprecedential
PARTIES	Y.S.G., petitioner v. Tonya Andrews, et al., respondents

TOPICS

immigration detention procedural due process injunctions subject matter jurisdiction removal proceedings

PRACTICE AREAS

immigration detention habeas corpus constitutional law civil procedure injunction enforcement

QUESTIONS PRESENTED

1. Whether the habeas petition was moot after petitioner had been released and subsequently redetained.
2. Whether exhaustion of administrative remedies should be required or waived before the court enforced its preliminary injunction.
3. Whether the immigration judge complied with the preliminary injunction’s requirement that the government prove current danger or flight risk by clear and convincing evidence.
4. Whether the immigration judge abused her discretion by applying a generic discretionary bond standard, failing to meaningfully assess current dangerousness and flight risk, shifting the burden to petitioner, and failing to consider material mitigation and community-ties evidence.
5. What remedy was appropriate for the violation of the preliminary injunction.

HOLDINGS

1. The habeas petition was not moot because petitioner had been redetained and the court could still grant effective relief by ordering his release and requiring a constitutionally compliant bond hearing.
2. The court waived any prudential exhaustion requirement because petitioner demonstrated irreparable injury and the administrative process was inadequate to resolve his constitutional challenge to the immigration judge’s bond determination.
3. Respondents violated the preliminary injunction because the immigration judge failed to meaningfully apply the clear-and-convincing-evidence standard and committed related legal errors in finding petitioner dangerous and a flight risk.
4. The appropriate remedy was to order petitioner’s immediate release under his prior conditions and permit redetention only after respondents provide the notice and immigration-judge hearing required by the preliminary injunction.

KEY QUOTATIONS

“At a minimum, the court accordingly has jurisdiction to determine whether respondents have complied with the preliminary injunction.” (at 9)

“That determination did not leave room for an added layer of agency discretion;” if the IJ “found that [petitioner] was not dangerous, [the IJ] would have had to release him.” (at 15)

“The clear and convincing standard requires that the evidence establish “an abiding conviction that the truth of [the] factual contentions at issue is highly probable.”” (at 16)

“This leads to the related point that the new charges, standing alone, are insufficient to demonstrate a material change in circumstances concerning petitioner’s dangerousness.” (at 21)

“Before he may be redetained, petitioner shall be afforded the process required by the court’s preliminary injunction order in the form of notice and a hearing before an immigration judge.” (at 23)

FACTUAL BACKGROUND

Petitioner came to the United States from Mexico as a young child, lived for many years in California, and was granted DACA in 2012. ICE detained him in 2022 based on his lack of lawful admission and criminal conviction, but an immigration judge released him on bond in May 2023 after finding that the government had not shown danger or flight risk by clear and convincing evidence. After petitioner spent approximately two years on supervised release, ICE redetained him in May 2025, prompting a preliminary injunction requiring notice and a constitutionally adequate hearing before redetention. An immigration judge later denied bond based principally on petitioner’s criminal history, pending misdemeanor charges, and speculative prospects in immigration proceedings, after which ICE redetained him again.

PROCEDURAL HISTORY

The court previously issued a preliminary injunction requiring petitioner’s release and a hearing before an immigration judge at which the government would bear the burden of proving danger or flight risk by clear and convincing evidence. After petitioner was released, DHS sought a pre-deprivation bond hearing, and an immigration judge denied bond. ICE then redetained petitioner. The court held that the immigration judge failed to comply with the preliminary injunction, denied respondents’ motion to dismiss without prejudice, granted petitioner’s motion to enforce, and ordered release subject to the injunction’s requirements.

DISPOSITION

other

REMAND INSTRUCTIONS

Respondents must immediately release petitioner under the same conditions applicable to his prior release. Before any redetention, respondents must provide notice and a hearing before an immigration judge, and must prove by clear and convincing evidence that petitioner presents a current danger to the community or a risk of flight. The parties must file a joint status report within 30 days and propose a schedule for any further merits briefing.

CASES CITED

- *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018)

- Aleman Gonzalez v. Barr, 955 F.3d 762 (9th Cir. 2020)
- Garland v. Aleman Gonzalez, Garland v. Aleman Gonzalez, 596 U.S. 543 (2022)
- Deakins v. Monaghan, 484 U.S. 193, 199 (1988)
- United States v. Verdin, 243 F.3d 1174, 1177 (9th Cir. 2001)
- Ruiz v. City of Santa Maria, 160 F.3d 543, 549 (9th Cir. 1998)
- Forest Guardians v. Johanns, 450 F.3d 455, 461 (9th Cir. 2006)
- Crawford v. Honig, 37 F.3d 485, 488 (9th Cir. 1994)
- Noriega-Lopez v. Ashcroft, 335 F.3d 874, 881 (9th Cir. 2003)
- Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004)
- Hernandez v. Sessions, 872 F.3d 976, 981, 988-89 (9th Cir. 2017)
- Mau v. Chertoff, 562 F. Supp. 2d 1107, 1113-14 (S.D. Cal. 2008)
- Matter of Fede, 20 I&N Dec. 35 (BIA 1989)
- Matter of Fuentes-Campos, 21 I&N Dec. 905, 912 (BIA 1997)
- Kia America, Inc. v. Rally Auto Group, Inc., No. 8:22-cv-00109-JVS-JDE, 2022 WL 17185011, at *2 (C.D. Cal. Oct. 20, 2022)
- FTC v. Affordable Media, 179 F.3d 1228, 1239 (9th Cir. 1999)
- Clark v. Coye, 60 F.3d 600, 604 (9th Cir. 1995)
- United States v. Holtzman, 762 F.2d 720, 726 (9th Cir. 1985)
- Martinez v. Clark, 124 F.4th 775, 784-85 (9th Cir. 2024)
- Singh v. Holder, 638 F.3d 1196, 1202-03 (9th Cir. 2011)
- Mondaca-Vega v. Lynch, 808 F.3d 413, 422 (9th Cir. 2015) (en banc)
- National Resources Defense Council, Inc. v. Pritzker, 828 F.3d 1125, 1135 (9th Cir. 2016)
- Ngo v. I.N.S., 192 F.3d 390, 398 (3d Cir. 1999)
- Perez v. Wolf, 445 F. Supp. 3d 275, 287 (N.D. Cal. 2020)
- Cole v. Holder, 659 F.3d 762, 771-72 (9th Cir. 2011)
- Obregon v. Sessions, No. 17-CV-01463-WHO, 2017 WL 1407889, at *7 (N.D. Cal. Apr. 20, 2017)
- Doung v. Kaiser, 2025 WL 2689266, at *9 (N.D. Cal. Sept. 19, 2025)
- Matter of Sugay, 17 I. & N. Dec. 637, 640 (BIA 1981)
- Meza v. Bonnar, No. 18-cv-02708-BLF, 2018 WL 2554572, at *3 (N.D. Cal. June 4, 2018)
- Qazi v. Albarran, No. 2:25-cv-02791-TLN-SCR, 2025 WL 2769837, at *3 (E.D. Cal. Sept. 29, 2025)
- Matter of Guerra, 24 I&N Dec. 37, 39 (BIA 2006)
- Matter of Urena, 25 I&N Dec. 140, 140 (BIA 2009)
- Vera-Perez v. Garland, No. 20-73247, 2022 WL 883742, at *1 (9th Cir. Mar. 24, 2022)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
 CALIFORNIA 10 11 Y.S.G., No. 2:25-cv-1884-SCR 12 Petitioner, 13 v. ORDER 14 TONYA

ANDREWS, et al., 15 Respondents. 16 17 Petitioner is a federal immigration detainee proceeding through counsel in this petition for 18 writ of habeas corpus filed pursuant to 28 U.S.C. § 2241.

The parties have consented to the 19 jurisdiction of the undersigned for all further proceedings. ECF No. 26. Currently pending 20 before the court is petitioner's motion to enforce the preliminary injunction issued on July 14, 21 2025, and respondents' motion to dismiss the § 2241 petition as moot. ECF Nos. 28, 29.

The 22 motions are fully briefed. The court heard the motions on October 16, 2025. For the reasons 23 explained in further detail below, the court denies respondents' motion to dismiss, grants 24 petitioner's motion to enforce the preliminary injunction, and orders respondents to release 25 petitioner and not redetain him unless they provide him a bond hearing that complies with the 26 preliminary injunction.

27 I. Factual and Procedural History 28 Petitioner was born in 1992 in Mexico and came to the United States when he was 1 approximately four years old. ECF No. 1-2 at 10 (Declaration of Y.S.G.). Since that time, he 2 resided in Patterson, California, where he graduated from high school before attending 3 community college in Hayward, Livermore, and Modesto.

ECF No. 1-2 at 10. 4 In 2012, U.S. Citizenship and Immigration Services ("USCIS") granted petitioner's 5 application for Deferred Action for Childhood Arrivals ("DACA"). ECF No. 1-2 at 2 6 (Declaration of Lydia Sinkus). He renewed his DACA application in 2015 and 2018, but USCIS 7 denied his renewal application in 2021 on account of a criminal conviction discussed below.

ECF 8 No. 1-2 at 10. In 2022, he applied for a U Visa based on being the victim of a crime. ECF No. 1- 9 2 at 10. That application remains pending with USCIS. Id. 10 On September 14, 2022, U.S. Immigration and Customs Enforcement ("ICE") originally 11 took petitioner into civil immigration custody outside of his home. ECF No. 1-2 at 2, 10. ICE 12 issued him a Notice of Intent to Issue a Final Administrative Removal Order ("FARO") that 13 alleged that (1) he was not a citizen of the United States, (2) that he was not lawfully admitted or 14 paroled into the United States, and (3) that on June 9, 2020, he sustained a felony conviction for 15 attempted lewd or lascivious acts (California Penal Code §§ 664/288(A)) in San Joaquin County 16 Superior Court for which he received an eighteen-month sentence.

ECF No. 1-2 at 59-61. On the 17 same date, ICE also issued the FARO, which removal order furnishes the statutory authority for 18 petitioner's detention pursuant to 8 U.S.C. § 1231. ECF No. 1-2 at 3, 57 (FARO), 59 (Notice of 19 Intent to Issue a FARO). 20 Petitioner requested asylum and withholding of removal based on his fear of persecution if 21 returned to Mexico, as well withholding of removal under the Convention Against Torture 22 ("CAT").

ECF No. 1-2 at 3, 10. An asylum officer found that he established a "reasonable" fear 23 of persecution and referred his grounds for withholding of removal to an Immigration Judge 24

(“IJ”). The IJ denied petitioner’s applications on March 15, 2023. Id. With the assistance of 25 counsel, petitioner appealed the IJ denial on April 10, 2023. ECF No. 1-2 at 4.

He also filed a 26 motion to remand on May 2, 2024. Id. Both his appeal and motion to remand remain pending 27 before the Board of Immigration Appeals (“BIA”). Id. 28 1 On May 18, 2023, petitioner filed a motion for a bond redetermination hearing.¹ ECF No. 2 32-1. Petitioner included letters from his family, friends, coworkers, and church members who 3 represent his support network in the community.

ECF Nos. 32-2 at 14-121; 32-3; 32-4. 4 Petitioner also submitted a report from Dr. Nicholas Nelson, the Medical Director of the Human 5 Rights Clinic at the University of California, San Francisco, who evaluated petitioner based on 6 his past trauma. ECF No. 32-2 at 83-96. Dr. Nelson has served as an expert witness in asylum 7 hearings in federal immigration court.

ECF No. 32-2 at 84. He evaluated petitioner’s “mental 8 health and its relationship to his history of physical and emotional trauma” while he was in 9 immigration detention. Id. at 84-85. The report details three specific traumatic events in 10 petitioner’s history beginning in 2008 and most recently in 2019, which included a head injury 11 where he lost consciousness after falling three stories from a building.

Id. at 86. According to 12 Dr. Nelson, petitioner’s symptoms of Post-Traumatic Stress Disorder (“PTSD”) are much 13 improved “with the passage of time, and at this point it would be appropriate to diagnose him 14 with PTSD in remission.” Id. at 89.

In addition to this clinical evaluation, petitioner also 15 submitted a letter from Manuel Ortiz, LCSW, that contained a detailed re-entry plan upon 16 petitioner’s release including: 1) housing and familial support; 2) sex offender and mental health 17 treatment; 3) education and employment; and, 4) pro-social activities and supports. Id. at 98-102; 18 see also id. at 104-106 (petitioner’s hand-written release plan).

19 On May 25, 2023, an IJ found that the government had failed to establish that petitioner 20 posed a risk of danger or flight by clear and convincing evidence and ordered his release on a 21 \$3,000 bond and release conditions (i.e. “alternatives to detention,” known as ATD). ECF No. 1-22 2 at 3, 28-29 (Order of the IJ). ICE released him the same day on the conditions that he wear an 23 electronic ankle monitor, check-in regularly with ICE, and participate in the Intensive 24 Supervision Appearance Program (“ISAP”).

ECF No. 1-2 at 3, 20 (ICE Order of Supervision). 25 In April 2024, petitioner was discharged from state parole based on his 2021 conviction 26 1 This hearing was requested pursuant to *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. 27 Cal. 2018) (granting class certification and a preliminary injunction), *aff’d sub. nom. Aleman Gonzalez v. Barr*, 955 F.3d 762 (9th Cir.

2020), rev'd and remanded sub. nom. *Garland v. 28 Aleman Gonzalez*, 596 U.S. 543 (2022). 1 after he successfully completed required courses. ECF No. 1-2 at 12, 34 (Certificate of 2 Discharge); ECF No. 28-1 at 116 (Referral Source Completion Notice for Eighteen Month DUI 3 Program). 4 Local police arrested petitioner in May 2024 in Stanislaus County on misdemeanor 5 charges of driving with a suspended license and operating a vehicle without an ignition interlock 6 device.

ECF No. 1-2 at 12, 66 (Criminal Complaint). He reported to the ISAP office following 7 his release from police custody and was re-fitted for a new ankle monitor. Id. Petitioner 8 continued his in-person check-ins at ICE field offices in November 2024 and March 20, 2025. 9 ECF No. 1-2 at 18, 21, 24. Based on his ongoing check-ins, petitioner was deescalated from an 10 ankle monitor to a smartwatch in March 2025.

ECF No. 1-2 at 12-13. His next regular in-person 11 check-in was scheduled for June 20, 2025. ECF No. 1-2 at 24 (Personal Report Record). But on 12 May 27, 2025, petitioner was told to report to the ISAP office in Stockton the next day to have his 13 watch checked. ECF No. 1-2 at 14. He reported on May 28, 2025 and was taken into ICE 14 custody while at the ISAP office.

Id. 15 During his two-year period of ISAP release, from May 2023 through May 2025, petitioner 16 continued to live with family in Patterson, California. ECF No. 1-2 at 11. He obtained a work 17 permit and was employed with six different employers in event production and food service. Id. 18 In his § 2241 petition, petitioner contends that ICE violated his Fifth Amendment right to 19 due process by redetaining him without a “pre-deprivation hearing” to determine whether such 20 detention is warranted.

ECF No. 1 at 39. Petitioner argues that he has a protected liberty interest 21 in conditional release that is comparable to a parolee. See ECF No. 1 at 26-29. The three-part 22 test articulated in *Matthews v. Eldridge* should apply. According to petitioner, *Matthews* 23 “required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.” 24 Id. at 30.

Petitioner submits that “[t]he existence of non-violent allegations that the agency has 25 been aware of since May 2024 did not significantly increase the government’s interest in 26 detaining him in May 2025, and it certainly did not increase that interest enough to outweigh the 27 private interests at stake in this case.” Id. at 33-34. With respect to flight risk, petitioner points 28 out that “the government has not proffered an itemized list of the supposed violations, nor has it 1 provided [petitioner] an opportunity to respond to these allegations.” Id. at 34.

2 II. Motion for a Preliminary Injunction 3 Petitioner filed a motion for a temporary restraining order and a preliminary injunction 4 concurrently with his § 2241 petition. ECF No. 2. Following briefing and a hearing on the 5 motion, as subsequently amended, ECF No. 9, Chief Judge Nunley granted petitioner’s motion 6 for a preliminary injunction. Judge Nunley’s order required

respondents to release petitioner and 7 to provide him with prior notice of the reasons for the revocation of his release and a hearing 8 before an immigration judge where the government has the burden of establishing by clear and 9 convincing evidence that petitioner poses a danger to the community or a risk of flight.

ECF No. 10 14. 11 After the court issued the preliminary injunction, ICE released petitioner on July 14, 2025. 12 ECF No. 28-1 at 2 (Declaration of Lydia Sinkhus). He returned to live with his parents in 13 Patterson and was placed back on ISAP supervision, which included an ankle monitor. Id. 14 On August 14, 2025, the Department of Homeland Security (“DHS”) filed a motion to 15 conduct a “pre-deprivation bond hearing” in the Adelanto Immigration Court.

ECF No. 28-1 at 6- 16 8. DHS requested that petitioner be redetained based on “over thirty” violations of the ATD 17 program, a statement petitioner made indicating that he would no longer comply with the 18 program, and his May 2024 arrest for driving on a suspended license and driving without an 19 ignition interlock device. ECF No. 28-1 at 7. 20 A. Evidence Submitted to IJ in Support of Re-Detention 21 As part of the motion, DHS submitted petitioner’s criminal history report, referred to as a 22 “RAP sheet;” the IJ decision from March 15, 2023 denying petitioner’s applications for 23 withholding of removal; petitioner’s filing receipt of an appeal to the BIA dated April 10, 2023; 24 the IJ order from May 25, 2023 granting petitioner’s release on bond; petitioner’s Form I-213 25 (Record of Deportable Alien);² and this court’s order granting a preliminary injunction.

ECF No. 26 28-1 at 9-48. The RAP sheet indicated that petitioner has a misdemeanor conviction for DUI in 27 28 2 The IJ decided not to admit the I-213 into the record at the pre-deprivation hearing. 1 May 2016; an August 2016 misdemeanor conviction for driving on a suspended license; another 2 misdemeanor conviction for driving with a blood alcohol concentration greater than 0.08 percent 3 in July 2019; a February 2021 felony conviction for attempted lewd or lascivious acts with a 4 minor under 14 years old; an April 2021 misdemeanor for obstructing a public officer; and a July 5 2022 felony parole violation.

ECF No. 28-1 at 11-17. Petitioner’s RAP sheet also showed two 6 pending misdemeanor charges for driving on a suspended license and driving without an ignition 7 interlock device. ECF No. 28-1 at 16. Notably, DHS did not submit any evidence of petitioner’s 8 purported violations of the ATD program while on bond nor any details pertaining to petitioner’s 9 purported statement that he was no longer willing to comply with the supervision program.

10 On August 20, 2025, the Adelanto Immigration Court issued a notice of custody 11 redetermination hearing for August 27, 2025. ECF No. 28-1 at 51. 12 B. Evidence Submitted to IJ in Opposition to Re-Detention 13 Prior to the hearing, petitioner submitted over 150 pages of evidence in support of his lack 14 of current dangerousness and flight risk. See ECF No. 28-1 at 91-317.

In his supporting 15 declaration, petitioner describes the steps that he took in the two plus years while released on 16 bond to obtain gainful employment, enhance his education, and participate in rehabilitation 17 classes and programs. ECF No. 28-1 at 96-102. During the first year of his ISAP supervision, 18 petitioner was also on state parole supervision.

ECF No. 28-1 at 97. As a result, petitioner was 19 wearing two separate ankle monitors, attending both individual and group therapy sessions 20 through the HOPE program, taking polygraph and drug tests routinely, and subject to a curfew, 21 home visits and travel restrictions. ECF No. 28-1 at 97; see also ECF No. 28-1 at 106-111 22 (Notice and Conditions of Parole).

Petitioner's declaration also describes in detail the steps that 23 he took to comply with ISAP while on bond and the technical glitches that he experienced in 24 using the required smartwatch monitor. ECF No. 28-1 at 99-100; see also ECF No. 28-1 at 133- 25 139 ("Poor tech, opaque rules, exhausted staff: inside the private company surveilling US 26 immigrants," THE GUARDIAN, March 7, 2022).

With respect to the supposed ISAP violations, 27 petitioner indicates that he was told "everything was fine" when he attended his regularly 28 scheduled ISAP appointments and in-person ICE check-ins and that he is "concerned many of 1 these are a mistake or a misunderstanding." ECF No. 28-1 at 100-101; see also ECF No. 28-1 at 2 131 (ICE Letter dated December 13, 2023 indicating that petitioner "has been compliant with all 3 requirements" of supervision); ECF No. 28-1 at 141 (Petitioner's Personal Report Record of 4 Supervision).

5 With respect to his May 2024 misdemeanor charges, petitioner indicates that he is 6 working with his county public defender and that he had attended all his court dates over the past 7 year while out of ICE custody in order to resolve them. ECF No. 28-1 at 98. Additionally, 8 petitioner indicates that he reported these charges to his ISAP officer as soon as he was released 9 from jail and that he physically reported to the ISAP office on the same day to obtain a new ankle 10 monitor.

ECF No. 28-1 at 99; see also ECF No. 28-1 at 247 (Letter from Deputy Public Defender 11 indicating that petitioner has been advised "to not discuss his pending charges in other tribunals 12 before they have been resolved."). Petitioner also submitted evidence of his pending U Visa 13 petition. ECF No. 28-1 at 238-245.

In December 2024, petitioner also completed his eighteen 14 month DUI rehabilitation classes. Id.; see also ECF No. 28-1 at 116. 15 Petitioner submitted additional evidence supporting his release, including letters from 16 family members, past and present employers, as well as friends to demonstrate his substantial ties 17 to the community. ECF No. 28-1 at 118-123, 150-203, 284-286.

This evidence also included 18 proof of petitioner's successful completion of educational programs as well as his state parole and 19 rehabilitative programming to address the factors that led to his past criminal convictions. ECF 20 No. 28-1 at 104-116, 125-126, 252-264. 21 III. August 2025 IJ Pre-Deprivation Hearing³ 22 An IJ held petitioner's pre-deprivation hearing on August 27, 2025 via video 23 conferencing.

ECF No. 28-1 at 320-332 (transcription of audio recorded hearing). The IJ's 24 written order followed on August 29, 2025. ECF No. 28-1 at 304-313. At the outset of the order, 25 the IJ acknowledged that this court required an individualized bond hearing in which DHS "shall 26 bear the burden of establishing by clear and convincing evidence, that [Y.S.G.] poses a danger to 27 3 For the sake of clarity, all references to "respondent" in the bond proceedings before the IJ have 28 been modified to "petitioner" or "Y.S.G." because he is the petitioner in proceedings in this court.

1 the community or a risk of flight." ECF No. 28-1 at 304, 307. Next, the IJ ruled on a venue issue 2 that is not before this court.⁴ ECF No. 28-1 at 304-05. Prior to explaining the basis for the bond 3 decision, the IJ recounted the evidence submitted by both petitioner and DHS and ruled on 4 petitioner's objections to the RAP sheet and Form I-213. ECF No. 28-1 at 305-06.⁵ The IJ did 5 not admit Form I-213 into the record.

Id. at 306. At the outset of the analysis section, the IJ 6 indicated that she "'has extremely broad discretion' in deciding whether to release a respondent 7 on bond" and in determining any specific bond amount. ECF No. 28-1 at 307 (citations omitted). 8 A. Danger to the Community 9 In assessing whether petitioner is a danger to the community, the IJ considered the 10 "recency, extent, and seriousness" of his criminal record.

ECF No. 28-1 at 307. The IJ noted that 11 petitioner had been released on an immigration bond in May 2023 after serving the sentence for 12 his most serious conviction and that while on bond he "engaged in various court and agency- 13 ordered programming, including sex offender treatment programming, drug testing, monitoring 14 by [ICE], and restrictions on his travel." ECF No. 28-1 at 308.

Then, the IJ focused on 15 petitioner's newest misdemeanor charges from April 2024 and emphasized that petitioner "did 16 not describe the facts and circumstances of these arrests in his written declaration and has not, for 17 example, professed himself to be factually innocent." Id. Based on all this evidence, the IJ 18 concluded that petitioner's criminal record is "extensive and serious" because it includes a drunk 19 driving offense.

Id. at 309; see also Id. at 310 (emphasizing that petitioner did not argue "that he 20 is factually innocent vis a vis these alleged violations."). The IJ did acknowledge that the victim 21 of petitioner's conviction for attempted lewd and lascivious conduct was not a minor, but an 22 23 4

Prior to the pre-deprivation hearing, petitioner filed a motion to change the venue to the San Francisco Immigration Court's nondetained docket.

Because the preliminary injunction did not address venue, the denial of petitioner's change of venue motion plays no part in the court's analysis of petitioner's motion to enforce the preliminary injunction. The IJ's description of the DHS's exhibits includes a reference to "documents from Respondent's reasonable fear interview (RFI) before the Asylum Office and pertaining to his administrative order of removal...." However, no such documents were listed as exhibits by DHS in their Motion to Set Pre-Deprivation Bond Hearing.

See ECF No. 28-1 at 9. Nor did respondents file any documents in this court pertaining to petitioner's RFI. 1 undercover law enforcement agent. Id. Despite the evidence of rehabilitative programming and 2 documentation of his mental health condition, the IJ found that "the explanation for his behaviors 3 does not make the behaviors themselves any less dangerous to the community." Id. at 310 4 (citation omitted).

As a result, the IJ found that "the Department has proven by clear and 5 convincing evidence that [Y.S.G.'s] release would pose a danger to the community" and that no 6 amount of bond was appropriate in this case. Id. 7 B. Flight Risk 8 The IJ made additional findings that "the Department had proven by clear and convincing 9 evidence that [Y.S.G.] is such a significant flight risk that no bond or non-monetary release 10 conditions could sufficiently mitigate that risk." ECF No. 28-1 at 310.

Part of the IJ's analysis 11 with respect to flight risk centered on the fact that petitioner "is in withholding-only proceedings" 12 and that the IJ had already denied him withholding of removal which petitioner had appealed to 13 the BIA. Id. at 311.

In determining that petitioner's "likelihood of prevailing" on appeal was 14 "exceedingly speculative," the IJ took administrative notice of the basis for the IJ's oral decision 15 denying petitioner withholding of removal. Id. at 311 n. 2. This oral decision is not a part of the 16 administrative record before this court.

In reviewing the oral decision, the IJ suggested 17 additional bases upon which petitioner could be denied all forms of withholding relief even if his 18 BIA appeal resulted in a successful remand to the IJ. Id. Although the IJ acknowledged that 19 petitioner also had a U Visa petition pending, she described this form of relief as "exceedingly 20 speculative, as is the timeline for that benefit's adjudication." Id. at 312.

The IJ did not provide 21 any analysis as to why this form of relief was unlikely in petitioner's case. Id. Additionally, the 22 IJ cited to petitioner's "disregard for rules and regulations imposed by state authorities subsequent 23 to his criminal convictions," as relevant evidence of his flight risk. Id. Accordingly, the IJ denied 24 petitioner bond on this additional independent basis.

25 C. Subsequent Events 26 Petitioner filed an appeal of the IJ's bond determination to the BIA, but has not yet 27 received a briefing schedule on appeal. ECF No. 28-1 at 3. According to petitioner's 28 immigration counsel, appeals of this nature typically take three to six months to be resolved. ECF 1 No. 28-1 at 3. 2 Based on the IJ's decision, ICE rearrested petitioner y on September 4, 2025, after he 3 reported as instructed to an ISAP office.

ECF No. 28-1 at 3 (Sinkhus Declaration). Petitioner 4 remains in immigration custody, at a detention center in Kern County. Id. 5 IV. Parties' Motions 6 A. Motion to Enforce Preliminary Injunction 7 On September 19, 2025, petitioner filed a motion to enforce the court's preliminary 8 injunction. ECF No. 28. Petitioner contends that the IJ's decision denying petitioner bond failed 9 to comply with the court's preliminary injunction because she misapplied the law and did not 10 hold the government to its heavy burden of proof.

ECF No. 28. "The clear and convincing 11 standard requires that evidence must establish 'an abiding conviction that the truth of [the] factual 12 contentions at issue is highly probable.'" ECF No. 28 at 10 (citing *Mondaca-Vega v. Lynch*, 808 13 F.3d 413, 422 (9th Cir. 2015) (en banc)). Petitioner asserts that the IJ applied the wrong standard 14 because she was treating the hearing as a discretionary bond redetermination request rather than a 15 Constitutionally mandated due process hearing where respondent had the burden.

ECF No. 28 at 16 12-13. 17 Additionally, the IJ failed to comply with the scope of review required by the preliminary 18 injunction. Id. at 13. Petitioner contends that the preliminary injunction was granted due to the 19 "serious concerns about the basis for his redetention and access to information to disprove the 20 basis for his detention while in custody." ECF No. 14 at 8. "DHS offered no admissible evidence 21 regarding the reasons stated by agency for [Y.S.G.]'s re-detention—the alleged ATD violations 22 and statement regarding compliance with release conditions, as well as Petitioner's May 2024 23 arrests.

That is because the IJ excluded DHS's evidence related to ATD violations and DHS[] 24 failed to include any evidence relating to the circumstances of Petitioner's May 2024" arrest. 25 ECF No. 28 at 13. What remained was petitioner's prior convictions, which another IJ had 26 already determined did not establish clear and convincing evidence of petitioner's risk of danger 27 or flight to warrant his ongoing detention.

ECF No. 28 at 13-15. 28 Petitioner also submits that the IJ improperly shifted the burden to petitioner to submit 1 evidence of his innocence on his pending misdemeanor charges. ECF No. 28 at 15-16. This 2 placed petitioner in a constitutional quandary by having to give up his Fifth Amendment right to 3 remain silent in order to secure his liberty from confinement.

Id. at 16. 4 Finally, petitioner argues that the IJ failed to comply with the court's preliminary 5 injunction because she was not a neutral and impartial adjudicator. ECF No. 28 at 20-21. As a 6

remedy, petitioner requests that he be immediately released from immigration custody and that 7 respondents be enjoined from detaining him “during the pendency of these proceedings.” ECF 8 No. 28 at 25.

9 B. Motion to Dismiss/Return to Petition/Opposition to Motion to Enforce 10 On September 29, 2025, respondents filed a combined motion to dismiss, return to the 11 2241 petition, as well as opposition to petitioner’s motion to enforce the preliminary injunction. 12 ECF No. 29. Respondents request that the § 2241 be dismissed based on lack of subject matter 13 jurisdiction, or, in the alternative, that the petition be denied on the merits.

ECF No. 29 at 2. 14 First, respondents submit that there is no remaining case or controversy for the court to adjudicate 15 because petitioner has been granted all the relief he requested in his § 2241 application. ECF No. 16 29 at 5-6. Since his “release from detention, and subsequent bond hearing that conformed with 17 the Court’s order,” the case is now moot.

Id. Alternatively, respondents argue that the § 2241 18 should be dismissed as premature because petitioner has not exhausted his administrative 19 remedies with the BIA. ECF No. 29 at 6. Finally, without conceding that a bond hearing was 20 constitutionally required, respondents contend that petitioner’s bond hearing satisfied due process 21 and complied with the court’s preliminary injunction.

Id. at 6. “This Court lacks the authority to 22 reassess the evidence presented at the bond hearing and come to a different conclusion, which is 23 the thrust of what YSG is now seeking, albeit cloaked in constitutional garb.” Id. at 7. Applying 24 the three-part standard of *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), respondents argue that 25 petitioner has received all the process that he is due as a noncitizen who is in removal 26 proceedings.

Id. at 7-9. To the extent the court finds otherwise, respondent submits that the only 27 available relief is another bond hearing before an IJ. Id. at 11. 28 //// 1 C. Petitioner’s Opposition to MTD/Reply 2 By way of reply to respondents’ omnibus motion, petitioner first indicates that the habeas 3 petition is not moot because petitioner has been re-detained.

ECF No. 30 at 2. “The question is 4 not whether the precise relief sought at the time the case was filed is still available, but whether 5 there can be any effective relief.” ECF No. 30 at 2 (quoting *Bayer v. Neiman Marcus Grp.*, 861 F.3d 853, 862 (9th Cir. 2017) (emphasis added)). Petitioner seeks the same relief at present that 7 he did when he first filed the § 2241 petition, namely, his immediate release from immigration 8 custody along with a bond hearing that complies with due process prior to any future detention.

9 Id. Petitioner also argues that his incarceration constitutes a collateral consequence that creates a 10 live controversy. Id. at 4. 11 As for the exhaustion of administrative remedies, petitioner contends that the court does 12 not have to await the outcome of the BIA appeal before enforcing

its preliminary injunction 13 order. ECF No. 30 at 4. Petitioner further submits that exhaustion should be waived in this case 14 because he will suffer irreparable injury, there is an inadequate administrative remedy, and 15 because administrative proceedings are futile due to the length of time that they take to resolve.

16 ECF No. 30 at 4-5. According to petitioner, the BIA appeal of the IJ's bond determination will 17 take three to six months to be resolved. See ECF No 28-1 at 3 (Sinkhus Declaration). 18 On the merits of the IJ's bond determination, petitioner emphasizes that he is not asking 19 the court to reweigh the evidence presented. ECF No. 30 at 7. Instead, petitioner ask the court to 20 determine "whether the IJ applied the proper standard of review, whether the IJ inappropriately 21 placed the burden of proof on the noncitizen, and whether the quantum of evidence (bond record) 22 failed to demonstrate by clear and convincing evidence that the noncitizen was a danger or flight 23 risk." Id. at 7.

In this case, petitioner asserts that he has rebutted the presumption that the IJ 24 reviewed all of the evidence related to dangerousness and flight risk. Id. at 9. According to 25 petitioner, "the IJ failed to apply the proper standard and scope to the hearing, shifted the burden 26 of proof onto Petitioner, and failed to consider probative and potentially dispositive evidence." 27 Id. at 9.

28 //// 1 V. Analysis 2 A. Motion to Dismiss 3 1. Mootness 4 Article III, Section 2 of the Constitution limits federal courts to the adjudication of actual, 5 ongoing controversies between litigants. *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). "The 6 case-or-controversy requirement demands that, through all stages of federal judicial proceedings, 7 the parties continue to have a personal stake in the outcome of the lawsuit." *United States v. 8 Verdin*, 243 F.3d 1174, 1177 (9th Cir.

2001) (internal quotation marks and citation omitted). 9 "The basic question in determining mootness is whether there is a present controversy as to which 10 effective relief can be granted." *Ruiz v. City of Santa Maria*, 160 F.3d 543, 549 (9th Cir. 1998). 11 Respondents bear the burden of demonstrating the lack of any effective relief that the court can 12 provide.

See *Forest Guardians v. Johanns*, 450 F.3d 455, 461 (9th Cir. 2006). 13 Although petitioner was released from immigration custody based on the issuance of the 14 preliminary injunction in this case, his liberty is once again restrained.

In essence, petitioner has 15 been placed back into the situation he was in at the time that he filed this § 2241 petition – he 16 argues that respondents have detained him without showing by clear and convincing evidence that 17 his detention is warranted. Petitioner contends that this case is not moot because the court can 18 still order his release from immigration custody and require the IJ to conduct a bond hearing that 19 complies with due process. "[D]istrict courts have continuing jurisdiction to enforce their 20 injunctions." *Crawford v. Honig*, 37 F.3d 485 (9th Cir.1994).

At a minimum, the court accordingly has jurisdiction to determine whether respondents have complied with the preliminary injunction. Moreover, the immigration detention cases involving mootness that respondent cites are materially distinguishable for the reasons identified by petitioner. ECF No. 24 30 at 3.

On the current posture of the case—where petitioner is again detained and argues such detention violates the preliminary injunction—respondents have not met their burden of demonstrating mootness. The motion to dismiss is denied. 2. Exhaustion of Administrative Remedies The federal habeas statute under which this case was filed does not require exhaustion of 1 administrative remedies.

Compare 28 U.S.C. § 2241 with 28 U.S.C. § 2254(b)(1)(A) (requiring 2 exhaustion of state court remedies). Courts may require exhaustion as a prudential matter when 3 “(1) agency expertise makes agency consideration necessary to generate a proper record and 4 reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass 5 of the administrative scheme; and (3) administrative review is likely to allow the agency to 6 correct its own mistakes and to preclude the need for judicial review.” *Noriega-Lopez v. 7 Ashcroft*, 335 F.3d 874, 881 (9th Cir.

2003) (citation omitted). The exhaustion requirement may 8 be waived if “administrative remedies are inadequate or not efficacious, pursuit of administrative 9 remedies would be a futile gesture, irreparable injury will result, or the administrative 10 proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). 11 Petitioner asserts that the exhaustion requirement should be waived based on irreparable 12 injury.

In granting the preliminary injunction, the district judge determined that petitioner had 13 demonstrated irreparable harm based on his redetention. ECF No. 14 at 9. After having been 14 released on bond for two years, petitioner had obtained a work permit as well as employment with 15 six different companies. ECF No. 14 at 9. He had also developed significant social ties to his 16 community.

Id. Based on his redetention, petitioner lost both job and career development 17 opportunities as a manager in his field of employment. ECF No. 28-1 at 65, 100-102. He has 18 also experienced emotional and psychological harm as a result of his redetention. *Id.* 19 Relief from the prudential exhaustion requirement is warranted in this case for multiple 20 reasons.

First, petitioner has adequately demonstrated that irreparable injury will result if he has 21 to await the outcome of his BIA appeal.⁶ No briefing schedule has been set for his appeal, and 22 even petitioner’s counsel estimates that it will take up to six months to receive a decision. 23 Moreover, it is not at all clear that the BIA could evaluate the legality of the IJ’s bond 24 determination in

relation to this court's preliminary injunction order—the BIA has, for example, 25 consistently refused to reach and decide constitutional questions.

See *Matter of Fede*, 20 I&N 26 Dec. 35 (BIA 1989) (explaining why neither an IJ nor the BIA have the legal authority to 27 6 In the interests of judicial economy, the court finds it unnecessary to address petitioner's 28 remaining arguments justifying the waiver of the exhaustion of administrative remedies. 1 consider constitutional challenges to the immigration regulations they administer); *Matter of 2 Fuentes-Campos*, 21 I&N Dec.

905, 912 (BIA 1997) (“[E]ven if we were to perceive a 3 constitutional infirmity in the unambiguous statute before us, we would be without authority to 4 remedy it.”). In light of the BIA's scope of review, administrative remedies in this case are not 5 adequate to resolve petitioner's due process challenge to the IJ's bond determination.

For all 6 these reasons, the exhaustion of administrative remedies is deemed waived in this case. See 7 *Hernandez v. Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017) (affirming district court decision to 8 waive exhaustion requirement in constitutional challenge to detention hearings); see also *Mau v. 9 Chertoff*, 562 F.Supp.2d 1107, 1113–14 (S.D. Cal. 2008) (finding administrative exhaustion did 10 not preclude a motion to enforce the district court's prior order because the BIA did not have 11 authority to enforce the federal court's judgment).

12 B. Motion to Enforce the Preliminary Injunction 13 Judge Nunley's preliminary injunction order required respondents to provide petitioner 14 with prior “notice of the reasons for the revocation of his release and a hearing before an 15 immigration judge to determine whether detention is warranted” where the government “shall 16 bear the burden of establishing by clear and convincing evidence, that Petitioner poses a danger to 17 the community or a risk of flight.” ECF No. 14 at 10.

The crux of the dispute is the IJ's 18 application of the clear and convincing standard.⁷ Petitioner argues that even though the IJ stated 19 she was holding DHS to a clear and convincing burden, she did not actually apply that high 20 standard. Petitioner further argues that DHS did not demonstrate danger or flight risk by clear 21 and convincing evidence as a matter of law and that the IJ engaged in other constitutional error.

22 Respondents argue that they did exactly what Judge Nunley ordered: they convened a hearing 23 before an IJ who—relying only on evidence that was provided to petitioner in advance of the 24 7 As noted above, DHS moved to re-detain petitioner based in part on his alleged violation of the 25 conditions of the ATD program and alleged statement that he would no longer comply with supervision.

However, respondents did not produce specific evidence connected to those 26 allegations in advance of the August 2025 hearing. The only purported evidence where vague statements in the

I-213, which the IJ excluded. While it is troubling that DHS has still not provided petitioner meaningful notice concerning these alleged violations, because the IJ did not rely on DHS's supervision-related allegations, the court does not further address them in this order.

1 hearing—found petitioner to be a danger and risk of flight by clear and convincing evidence. As 2 explained below, the court finds respondents did violate the preliminary injunction when the IJ 3 failed to meaningfully apply the clear and convincing standard and committed other error integral 4 to the proper implementation of that standard. 5 1. Legal Standards 6 A district court has continuing jurisdiction to enforce its injunction.

See *Crawford*, 377 F.3d at 488. The party seeking to enforce the injunction has the burden of showing by clear and 8 convincing evidence that the enjoined party violated a specific provision of the court's order. *Kia America, Inc. v. Rally Auto Group, Inc.*, Case No. 8:22-cv-00109-JVS-JDE, 2022 WL 17185011 10 at *2 (C.D. Cal. Oct. 20, 2022) (citing *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir.

11 1999)). The language in an injunction should be clear such that ordinary persons will know 12 "precisely" what action is proscribed in order to provide sufficient notice to the party being 13 enjoined. *Clark v. Coye*, 60 F.3d 600, 604 (9th Cir. 1995). "[A]ll ambiguities are resolved in 14 favor of the person [or entity] subject to the injunction." *United States v. Holtzman*, 762 F.2d 15 720, 726 (9th Cir.

1985). 16 The standard of review must also account for the fact that what is being reviewed here is 17 an immigration judge's determination of danger and flight risk. In constitutional challenges to an 18 IJ's detention determination, a habeas court generally reviews mixed questions of fact and law 19 under an "abuse of discretion" standard. *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir.

2024). 20 "[A]buse of discretion" review does involve "reweigh[ing] evidence" but rather determining 21 whether the IJ "applied the correct legal standard." *Id.* (citation and quotations omitted). In other 22 words, "[i]n reviewing the IJ's determination, a district court[s] ... review is limited to whether 23 the IJ's decision 'reflects clear legal error or is unsupported by sufficient evidence.'" *Quan v. 24 Barr*, No. 20-cv-08118-LB, 2021 WL 308610 at *4 (N.D.

Cal. 2021) (quoting *Hilario Pankim v. 25 Barr*, No. 20-CV-02941-JSC, 2020 WL 2542022, at *8 (N.D. Cal. May 19, 2020) (internal 26 citation and quotation omitted)). The reviewing court must bear in mind that "the government's 27 discretion to incarcerate non-citizens is always constrained by the requirements of due process." 28 *Hernandez*, 872 F.3d 976, 981 (9th Cir.

2017). Moreover, a habeas court reviews pure questions 1 of law de novo. See *Singh v. Holder*, 638 F.3d 1196, 1202-03 (9th Cir. 2011). 2 Incorporating the two standard of review doctrines discussed above, the court will 3 determine whether petitioner has shown clearly and convincingly

that the IJ abused her discretion 4 in determining that petitioner is dangerous or a flight risk by clear and convincing evidence.

The 5 court will also determine whether petitioner has shown clearly and convincingly that the IJ 6 engaged in pure legal error prohibited by the preliminary injunction. 7 2. Analysis 8 a. Danger to the Community 9 As to petitioner's dangerousness, the IJ abused her discretion by failing to meaningfully 10 apply the clear and convincing standard and by committing other legal error integral to the proper 11 implementation of that standard in this context.

As a threshold matter, the IJ erred by proceeding 12 as if this were a generic bond hearing in which an IJ exercises broad discretion. The IJ stated she 13 has "'extremely broad discretion' in deciding whether to release a [non-citizen] on bond[.]" ECF 14 No. 28-1 at 307 (quoting *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006)). That may be true in 15 a generic bond proceeding under 8 U.S.C. § 1226.

But as explained in *Martinez*, it is not true in a 16 constitutionally mandated proceeding involving a heightened burden on DHS like the one at issue 17 in this case. Just as in *Martinez*, here a habeas court had already ruled that "due process requires 18 the government to show by clear and convincing evidence that the detainee presents a flight risk 19 or a danger to the community at the time of the bond hearing." *Martinez*, 124 F.4th at 784 20 (quoting *Martinez v. Clark*, 2019 WL 5962685, at *1 (W.D.

Wash. Nov. 13, 2019)). "That 21 determination did not leave room for an added layer of agency discretion;" if the IJ "found that 22 [petitioner] was not dangerous, [the IJ] would have had to release him." *Id.* Thus, the IJ's 23 reference to broad discretion imported a legal standard at odds with the preliminary injunction. 24 See ECF No. 28-1 at 307. 25 This error appears to have infected the IJ's decision concerning both dangerousness and 26 flight risk and is not mitigated by the IJ's statement that she applied the clear and convincing 27 standard.

The clear and convincing standard requires that the evidence establish "an abiding 28 conviction that the truth of [the] factual contentions at issue is highly probable." *Mondaca-Vega 1 v. Lynch*, 808 F.3d 413, 422 (9th Cir. 2015) (en banc).

As illustrated below, the IJ's invocation 2 of the clear and convincing standard functioned as "lip service" to a heightened standard that the 3 IJ did not then abide "in [the IJ's] reasoning and decision." *Nat'l Res. Def. Council, Inc. v. 4 Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016).⁸ In reaching this conclusion, the court makes no 5 finding as to whether respondents could, in a subsequent pre-deprivation hearing, show by clear 6 and convincing evidence that petitioner presents a danger or risk of flight.

Rather, the court finds 7 that the IJ failed to implement the clear and convincing standard in the following ways. 8 First, the IJ failed to make a meaningful determination as to present

dangerousness in at 9 least two ways.

The IJ focused on petitioner's older criminal convictions, ECF 28-1 at 308-309, 10 which another IJ had already found did not demonstrate danger by clear and convincing evidence. 11 See *Ngo v. I.N.S.*, 192 F.3d 390, 398 (3rd Cir. 1999), amended and rehearing denied Dec. 30, 12 1999 (emphasizing that "[t]he fact that some... [immigrants] posed a risk of flight in the past does 13 not mean they will forever fall into that category.

Similarly, presenting danger to the community 14 at one point by committing crime does not place them forever beyond redemption." Petitioner's 15 conviction history—involving one felony conviction, one parole violation, and two misdemeanor 16 convictions in relatively close succession several years earlier—are not like those in *Martinez*, 17 where the petitioner had multiple felony drug trafficking convictions more than ten years apart.

18 See *Martinez*, 124 F.4th at 775 (emphasizing that there was no indication that the noncitizen 19 would "not revert to his old habits of drug use and trafficking upon his release."). The Ninth 20 Circuit found those multiple felony convictions over many years "provided compelling evidence 21 that he was a danger to the community." *Martinez*, 124 F.4th at 785.

Here, by contrast, the IJ's 22 analysis was preoccupied with an increasingly stale conviction history which another IJ had 23 8 Respondents submitted as supplemental authority a recent decision by another judge of this 24 court denying a habeas petitioner's request for further relief after an IJ found the petitioner should be detained at a detention hearing required by a preliminary injunction.

ECF No. 34-1 (*Doe v. 25 Becerra, et al.*, No. 2:25-cv-00647-DJC-DMC, ECF No. 58 (E.D. Cal. Oct. 21, 2025) (order 26 denying the petitioner's motion to amend the preliminary injunction)). That decision involved procedural issues not raised in the instant motion.

The undersigned recognizes that the court in 27 *Doe* also denied an earlier request by the petitioner to enforce the preliminary injunction in that case, No. 2:25-cv-00647-DJC-DMC, ECF No. 41, but finds the two cases materially 28 distinguishable, at a minimum, based on the respective records before the IJs in each case. 1 already found insufficient to demonstrate danger more than two years earlier.

2 The IJ also failed to make a meaningful determination as to present dangerousness by 3 failing to substantively address petitioner's post-release evidence of rehabilitation. That evidence 4 included proof of petitioner's successful completion of educational programs, an eighteen-month 5 DUI program, other rehabilitative programming to address the factors that led to his past criminal 6 convictions (including sex offender treatment), and his successful completion of state parole.

7 ECF No. 28-1 at 104-116, 125-126, 252-264. The IJ stated that, “[t]he Court has carefully 8 considered the volume of evidence regarding the educational, vocational, and rehabilitative 9 courses and programming engaged in by Respondent, as well as the many positive character 10 reference letters ... submitted on his behalf.” Id. at 309.

However, the IJ did not actually analyze 11 any of this evidence or attempt to explain why it did not mitigate danger, instead explaining only 12 why other evidence—concerning mental health—submitted by petitioner does not “negate the 13 dangerousness of his conduct.” Id. (citation omitted).

The IJ’s failure to meaningfully address 14 the extensive mitigation record presented by petitioner is particularly troubling given that it 15 involved a period after another IJ had already found petitioner not to be dangerous by clear and 16 convincing evidence. It is “not constitutional error for an IJ to base [a detention] decision on [a] 17 petitioner’s criminal record, so long as the IJ analyzes the recency of the crimes and what (if any) 18 actions the petitioner has taken to rehabilitate” himself.

Perez v. Wolf, 445 F. Supp. 3d 275, 287 19 (N.D. Cal 2020) (emphasis added); see also Cole v. Holder, 659 F.3d 762, 771-72 (9th Cir. 2011) 20 (holding in another context of IJ decision making “where potentially dispositive testimony and 21 documentary evidence is submitted, the BIA must give reasoned consideration to that evidence”). 22 Meaningful evaluation of mitigation evidence relevant to danger is necessary to ensure that the 23 “high burden” of the clear and convincing standard is “demonstrated in fact, not ‘in theory.’” 24 Obregon v. Sessions, No. 17-CV-01463-WHO, 2017 WL 1407889, at *7 (N.D.

Cal. Apr. 20, 25 2017) (quoting United States v. Patriarca, 948 F.2d 789, 792 (1st Cir. 1991)). For these reasons, 26 the IJ did not meaningfully assess petitioner’s current dangerousness at the bond hearing. 27 Second, the IJ also erred in relying on the sparse record evidence concerning petitioner’s 28 new misdemeanor charges to find by clear and convincing evidence that he is a danger.

DHS 1 presented no evidence reasonably showing that those charges demonstrate petitioner’s release 2 would threaten the community. Respondents did not submit a police report describing any 3 reckless or otherwise dangerous behavior connected to the new charges.

The evidence petitioner 4 presented—which the IJ did not mention—indicated that he was at a gas station when he was 5 approached by the police. ECF No. 28-1 at 98. Additionally, since May 2024, petitioner has 6 lifted the suspension on his driver’s license. See ECF No. 28-1 at 291 (copy of petitioner’s valid 7 driver’s license). Following his arrest on the new charges, petitioner reported the charges to his 8 ICE supervision office and obtained a new ankle monitor.

Moreover, he attended every court date while he was out of custody. The IJ did not attempt to explain what about the new charges makes petitioner dangerous. The IJ instead stated that petitioner “did not describe the facts and circumstances of these arrests in his written declaration”—which is not true, as just noted— “and has not, for example, professed himself to be factually innocent.” ECF No. 28-1 at 308; see also *id.* at 310 (“The Court again reiterates that [petitioner] has not, for example, argued that he is factually innocent vis a vis these alleged violations.”).⁹ In making this latter point, the IJ impermissibly shifted the burden onto petitioner to show he was not dangerous (“factually innocent”) instead of maintaining the burden on respondents, as required by the preliminary injunction order.

This leads to the related point that the new charges, standing alone, are insufficient to demonstrate a material change in circumstances concerning petitioner’s dangerousness. Another IJ had already determined, on the same clear and convincing standard, that DHS failed to show that petitioner was a danger to the community. “Where an individualized assessment of flight risk and dangerousness has been made and bond granted, courts follow the Board of Immigration Appeals in requiring a ‘material change of circumstances’ before bond can be revoked or modified.” *Doung v. Kaiser*, -- F.Supp.3d --, 2025 WL 2689266, at *9 (N.D.

Cal. Sept. 19, 2025) (quoting *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981)). This rule is compelled by due process. See *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at *3 (N.D. Cal. June 27, 2018). The IJ also noted petitioner’s “demonstrated willingness to reoffend,” in apparent reference to the misdemeanor charges. ECF 28-1 at 310. (holding that where a noncitizen was detained under section 1226(c) and released, “due process would seem to require an administrative hearing to show a material change in circumstances” before she can be re-detained); *Qazi v. Albarran*, 2025 No. 2:25-cv-02791-TLN- 4 SCR, WL 2769837, at *3 (E.D.

Cal. Sept. 29, 2025) (“Petitioner was previously released pursuant to a finding that he was not at risk of fleeing or harming others, and as such, due process prevents him from being redetained except upon a showing of a material change in circumstances.”).

As noted above, there was nothing in the IJ record in August 2025 showing petitioner’s new charges involved dangerous conduct.¹⁰ Under these circumstances, the new arrest could not, standing alone, and under the same clear and convincing standard, demonstrate a material change in circumstances warranting a different dangerousness outcome in August 2025 relative to the dangerousness outcome in May 2023.¹¹ For all these reasons, petitioner has shown that the IJ abused her discretion and committed related legal error in finding he posed a danger to the community by clear and convincing evidence.

b. Flight Risk For similar reasons, petitioner has shown that the IJ abused her discretion in finding petitioner to be a flight risk by clear and convincing evidence. The IJ relied exclusively on another IJ’s denial of petitioner’s requests for relief that would protect him against removal

and 19 the “exceedingly speculative” possibility that he might prevail upon appeal of that denial or
20 obtain some other relief against removal.

ECF No. 28-1 at 310-312. But the denial of 21 petitioner’s requests for relief occurred in March
2023, before the May 2023 determination that 22 10 Not all alleged criminal conduct is equal – the
severity and nature of unadjudicated charges necessarily matter when an IJ relies on them in
making a dangerousness determination.

Here, the 23 IJ did not attempt to explain how the nature of the new charges against petitioner tend
to show he is dangerous, instead citing authority concerning arrests for allegedly violent conduct.
See *id.* at 24 208 (citing *Matter of Urena*, 25 I&N Dec. 140, 140 (BIA 2009), which involved
“several arrests for offenses with the potential for violent harm to persons,” and *Vera-Perez v.*
Garland, No. 20- 25 73247, 2022 WL 883742, at *1 (9th Cir.

Mar. 24, 2022), which involved an arrest for corporal injury on a spouse and another arrest for a
DUI). The IJ’s failure to engage with the substance of 26 the new charges against petitioner further
demonstrates the IJ’s misapplication of the heightened clear and convincing burden. 27 11 Given
the analysis above, the court need not reach petitioner’s argument that the IJ should not 28 have
relied on unadjudicated criminal charges at all.

ECF No. 28-1 at 11-12. 1 DHS had not proven a risk of flight by clear and convincing evidence.
The IJ did not cite any 2 new evidence relevant to flight risk. The absence of any change in
circumstances relative to the 3 same agency’s prior determination of flight risk on clear and
convincing evidence—let alone a 4 material change in circumstances, see *supra* § V.B.2.a—
demonstrates an abuse of discretion in 5 implementing the clear and convincing evidence standard.

6 Additionally, the IJ failed to meaningfully discuss the probative evidence petitioner 7 submitted
demonstrating his significant ties to the community. See *Cole*, 659 F.3d at 771 8 (explaining that if
“the agency did not consider all the evidence before it, a catchall phrase does 9 not suffice, and the
decision cannot stand.”).

The IJ’s passing reference to that evidence is 10 insufficient to show that the IJ meaningfully
considered it in determining whether DHS had 11 carried its burden.12 12 VI. Conclusion 13
Having determined that the IJ’s decision did not comply with the clear and convincing 14 standard
mandated by the preliminary injunction, the remaining issue is what remedy should be 15 ordered.

Given that this is respondents’ first violation of the preliminary injunction order, the 16 court does
not believe it would be appropriate to order petitioner unconditionally released. 17 Rather, the
court will return petitioner to the position he was in after prevailing in obtaining 18 preliminary
injunctive relief. Respondents are ordered to release petitioner and may redetain him 19 only if
they comply with the requirements for such redetention as set out in the preliminary 20 injunction
order.

21 Accordingly, IT IS HEREBY ORDERED that: 22 1. Respondents' motion to dismiss (ECF No. 29) is denied without prejudice. 23 2. Petitioner's motion to enforce the preliminary injunction order (ECF No. 28) is 24 granted. 25 3. Respondents shall immediately release petitioner under the same conditions that he 26 27 12 Based on the above analysis, it is unnecessary to address petitioner's argument that the IJ was not a neutral fact finder.

28 1 | was previously released from immigration custody. 2 4. Before he may be redetained, petitioner shall be afforded the process required by the 3 || court's preliminary injunction order in the form of notice and a hearing before an immigration 4 || judge. At any such hearing, respondents have the burden of establishing, by clear and convincing 5 || evidence, that petitioner poses a current danger to the community or a risk of flight.

6 5. Absent a further procedural order of the court, the parties shall file a joint status report 7 || within 30 days indicating whether respondents will seek to redetain petitioner based on current 8 | circumstances and whether petitioner still believes that discovery is warranted (ECF No. 17).

The 9 || parties shall also submit a proposed timeline for any final merits briefing on the petition. !> The 10 || court may convene a status conference after the filing of the joint status report. 11 | DATED: October 22, 2025 mk 13 14 SEAN C. RIORDAN UNITED STATES MAGISTRATE JUDGE 15 16 17 18 19 20 21 22 23 24 25 76 | 3 The court recognizes that respondents have already filed their "return" on the petition.

ECF 27 || No. 29. Respondents may choose to rest on that return. However, the court believes further merits briefing may ultimately be necessary to address whether the preliminary injunction should 28 | be converted into a judgment in petitioner's favor and/or whether the case has become moot. 23