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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**
14

15 ROBERTO CARLOS RIVAS MARTINEZ,

16 Petitioner,

17 v.

18 ERNESTO SANTACRUZ JR. et al.,

19 Respondents.

CASE NO: 5:25-cv-03597-SSS-BFM

**PETITIONER'S REPLY IN SUPPORT
OF EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION**

1 **I. INTRODUCTION**

2 Respondents' mootness argument fails because this Court's January 7, 2026 TRO order
3 (Dkt. 11) granted neither of the specific remedies Petitioner requested in the ex parte motion
4 (Dkt. 4). Petitioner sought (1) **immediate release** from custody without bond or electronic
5 monitoring pending these proceedings, or in the alternative (2) **immediate release** coupled with
6 a §1226(a) bond hearing within 14 days where Respondents would bear the burden of proof by
7 **clear and convincing evidence** to demonstrate danger or flight risk. Neither of these remedies
8 was granted.
9

10 Instead, Respondents provided a bond redetermination hearing on January 15, 2026 as a
11 tactical response to Petitioner's habeas petition and the pending class-wide injunction in
12 *Maldonado Bautista v. Santacruz et al*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D.
13 Cal. Nov. 25, 2025). As Respondents acknowledged in their prior filing, Petitioner appears to be
14 a member of the Bautista "Bond Eligible Class," and his entitlement to a bond hearing is subject
15 to that judgment.
16

17 However, the hearing provided failed to meet the constitutional minimum for such a
18 proceeding. When a bond hearing is triggered by habeas corpus review—whether by individual
19 petition or class action—the Ninth Circuit requires that the government bear the burden of
20 justifying continued detention by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196,
21 1203–04, 1208 (9th Cir. 2011) (holding that in a habeas-ordered bond hearing under § 1226(a),
22 the government must prove flight risk or dangerousness by clear and convincing evidence). This
23 hearing did not provide the relief requested by the TRO, and did not cure the due process
24 violations alleged in the Petition.
25

26 Here, the Immigration Judge ("IJ") conducted a standard custody redetermination under 8

1 C.F.R. § 1236.1, placing the burden on Petitioner, relying on uncorroborated hearsay to reject his
2 sworn testimony, and ignoring binding flight-risk factors. This was not the constitutionally
3 adequate hearing required by *Singh* and contemplated by the *Maldonado Bautista* injunction.
4 Petitioner remains detained without the relief he sought—neither release nor a proper,
5 burden-shifted hearing—and his claims are therefore not moot.

6 **II. THE BOND HEARING WAS CONSTITUTIONALLY DEFECTIVE AND**
7 **PETITIONER'S CLAIMS ARE NOT MOOT**
8

9 **A. The Constitutional Defects in the Bond Hearing**

10 The Immigration Judge deemed Petitioner not credible—and thus a flight risk—based
11 exclusively on the unsworn, hearsay allegations contained in Form I-213, which directly
12 contradicted Petitioner's sworn, consistent testimony regarding the circumstances of his
13 apprehension. This constitutes a constitutionally defective credibility determination that fails the
14 balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), by ignoring both
15 the profound private interest at stake—Petitioner's physical liberty—and the high risk of
16 erroneous deprivation created by relying on uncorroborated government reports, while
17 disregarding Petitioner's overwhelming equities: his 35-year residence in the United States since
18 infancy, his stable employment and family ties, and his complete lack of criminal history.

20 Moreover, the IJ fundamentally misallocated the burden of proof. In habeas-ordered bond
21 hearings under § 1226(a), it is the government's burden—not the detainee's—to prove by clear
22 and convincing evidence that detention is justified. *Singh*, 638 F.3d at 1203–04. The IJ inverted
23 this burden, substituting an unreliable, unverified DHS narrative for Petitioner's sworn testimony
24 and abdicating the judicial role of a neutral arbiter. This is precisely the type of “fundamentally
25 unfair” procedure that habeas courts reject. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D.
26

1 Cal. 2019)(holding that detention without a pre-deprivation hearing is unconstitutional). These
2 errors and Petitioner’s continued detention without a pre-deprivation hearing contain the precise
3 constitutional defects warranting habeas intervention under 28 U.S.C. § 2241.

4 **B. The Constitutional Defects in the Bond Hearing**

5 A case becomes moot only when “it is impossible for a court to grant any effectual relief
6 whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). Here, effective
7 relief remains available: Petitioner can be released, or this Court can order a constitutionally
8 adequate bond hearing. Voluntary cessation of unlawful conduct does not moot a case unless the
9 defendant shows “there is no reasonable expectation that the wrong will be repeated.” *Friends of*
10 *the Earth, Inc. v. Laidlaw Env’t Servs.*, 528 U.S. 167, 189 (2000). Respondents have not met this
11 burden.
12

13 The single case Respondents cite, *Gonzales et al. v. Noem et al.*, No.
14 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 25, 2025), is readily distinguishable and does not
15 support mootness here. In *Gonzales*, the bond hearings provided pursuant to the TRO complied
16 with constitutional due process, thereby affording petitioners the meaningful relief they
17 sought—a fair opportunity to contest their detention. In contrast, the hearing afforded to
18 Petitioner here was procedurally and substantively flawed, denying him the core safeguards
19 required under *Singh* and perpetuating the very constitutional violation his habeas petition seeks
20 to redress. Where a purported remedy is itself defective and fails to provide the relief requested,
21 it cannot render a live controversy moot. See, e.g., *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91
22 (2013) (mootness requires that no effective relief can be granted).
23

24 This principle is underscored by *Hernandez v. Sessions*, where the Ninth Circuit held that
25 releasing class members from detention did not moot their constitutional challenge to a
26

1 bond-setting policy. The court reasoned that the government's actions of imposing unaffordable
2 bonds without considering financial circumstances failed to remedy the core alleged harm. 872
3 F.3d 976, 990 (9th Cir. 2017). Similarly, providing a constitutionally defective bond hearing that
4 inverts the burden of proof and relies on hearsay does not remedy Petitioner's claim that he is
5 being detained without due process. The core harm, unlawful detention, absent a fair hearing,
6 persists. Thus, Gonzales is inapposite, and Petitioner's claim remains justiciable.

7
8 **C. Petitioner's Detention Remains Unlawful**

9 Petitioner's detention persists in violation of due process because he has been afforded
10 neither release nor a constitutionally adequate bond hearing. The proceedings thus far have been
11 marred by fundamental legal error. First, the Immigration Judge initially refused to provide any
12 bond hearing at all, erroneously classifying Petitioner under the now widely rejected *Matter of*
13 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) regime—an interpretation multiple federal courts
14 have held conflicts with the plain text of 8 U.S.C. § 1226(a).

15
16 Then, when a hearing was belatedly convened, the IJ compounded the error by
17 misallocating the burden of proof, relying on unsworn and uncorroborated hearsay to reject
18 Petitioner's sworn testimony, and wholly disregarding compelling evidence of Petitioner's
19 profound community and family ties, his decades-long residence, and his lack of any criminal
20 record. This flawed adjudication failed to provide the individualized assessment and procedural
21 fairness required by the Fifth Amendment.

22 The aggregation of these defects—the initial denial of any hearing, the subsequent
23 provision of a hearing that inverted constitutional burdens and relied on unreliable evidence, and
24 the continued deprivation of liberty absent a lawful justification—constitutes the precise pattern
25 of constitutional violations that 28 U.S.C. § 2241 exists to remedy. Habeas corpus remains the
26

1 essential safeguard to correct such systemic due process failures in the administrative process.

2 **III. LIKELIHOOD OF SUCCESS**

3 Petitioner demonstrates a clear likelihood of success on the merits under *Winter v. NRDC*,
4 555 U.S. 7 (2008), because his detention violates both statutory mandates and constitutional due
5 process.

6 **A. Statutory, Legal, and Evidentiary Errors**

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8 Petitioner's continued detention violates due process because he has been deprived of a
9 pre-deprivation hearing before a neutral arbiter. A post-deprivation immigration judge review
10 cannot cure an initial warrantless arrest and prolonged custody absent prompt, individualized
11 safeguards.

12 Additionally, Petitioner's constitutional rights were violated here, which led him to file
13 this habeas. The IJ initially erred by treating Petitioner as a §1225(b)(2)(A) "applicant for
14 admission" ineligible for bond and denied Petitioner any hearing. That legal classification has
15 been squarely rejected by multiple courts in this District, including this Court in *Maldonado*
16 *Bautista*. Only after the filing of this habeas petition and TRO did the IJ conduct a bond
17 redetermination hearing, at which the IJ again erred by denying bond based solely on the
18 unsworn hearsay contained in Form I-213

19
20 Form I-213 is rebuttable hearsay. *Espinoza v. INS*, 45 F.3d 308, 310–11 (9th Cir. 1995)
21 ("A petitioner who produced probative evidence that contradicts anything material on the I-213
22 would cast doubt upon its reliability"); *Murphy v. INS*, 54 F.3d 605, 610–11 (9th Cir. 1995)
23 (testimony should not be disregarded merely because it is uncorroborated and self-interested).
24 Petitioner's sworn testimony directly contradicted the I-213, yet the IJ credited the unverified
25 government document over Petitioner's firsthand account—a clear due process violation. *Baliza*
26

1 v. *INS*, 709 F.2d 1231, 1233 (9th Cir. 1983) (hearsay documents are inadmissible where
2 cross-examination of the preparer is thwarted).

3 Even assuming arguendo the I-213's disputed "evasion" claim, the IJ's assertion that no
4 bond amount would secure appearances finding lacks foundation: fleeing masked, unidentified,
5 heavily armed ICE agents during a warrantless workplace raid reflects reasonable
6 self-preservation—not future nonappearance risk—especially amid well-documented 2025-26
7 ICE violence. *See Perez Cruz v. Barr*, 776 F. App'x 417 (9th Cir. 2019) (mass workplace stops
8 without individualized reasonable suspicion violate Fourth Amendment and 8 C.F.R. §
9 287.8(b)(2), suppressing I-213 as fruit of unlawful raid). Flight from perceived mortal threat in
10 such chaos bears no rational nexus to court compliance, as survival instinct does not predict
11 adherence with a judicial and lawful process.
12

13 **B. The IJ Ignored Binding Flight-Risk Factors**

14 The Immigration Judge entirely ignored the binding flight risk factors set forth in *Matter*
15 *of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006): (1) whether the non-citizen has a fixed address in
16 the United States; (2) the non-citizen's length of residence in the United States; (3) the
17 non-citizen's family ties in the United States and whether they may entitle the non-citizen to
18 reside permanently in the United States in the future; and (4) the non-citizen's manner of entry
19 into the United States.
20

21 Petitioner satisfies each factor overwhelmingly. He maintains a fixed address in Monterey
22 Park, California, residing with his U.S. citizen fiancée Rosie Martinez. He has lived continuously
23 in the United States for over 35 years since entering as an infant around 1990. His family
24 ties—through imminent marriage to a U.S. citizen—provide a clear pathway to lawful permanent
25 residence and his decades-ago entry as a toddler over which he had no control demonstrates
26

1 profound integration into American society, not evasion of immigration authorities. Given
2 Petitioner's clean record and compelling family incentives to appear, due process demands his
3 immediate release. *Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018) (requiring bond hearings
4 where DHS bears the burden to demonstrate that the respondent is not a flight risk or danger to
5 the community).

6
7 **C. Systemic Immigration Judge Bias Deprives Petitioner of a Neutral Arbiter**

8 Petitioner's sham bond hearing exposes a deeper structural defect within the Executive
9 Office for Immigration Review (EOIR). Immigration judges function not as impartial Article I
10 arbiters, but as DOJ prosecutors wearing judges' robes, systematically directed to prioritize
11 deportations over due process. This past year alone saw DOJ aggressively hire "Deportation
12 Judges"¹ explicitly tasked with accelerating removals, while firing en masse over 200
13 independent-minded immigration judges IJs deemed insufficiently punitive, hereby rendering
14 EOIR's claimed neutrality under PM 25-33 a hollow fiction amid quotas, arbitrary BIA mandates
15 like *Matter of Dobrotvorskii*, 29 I&N Dec. 211 (BIA 2025) (new sponsor requirements), and
16 open defiance of federal court release orders.² IJs now routinely urge blanket bond denials,
17 dismissing compelling evidence of family ties, community ties, employment history, and zero
18 criminality in favor of unsworn ICE narratives and scare tactics, thereby compounding
19 Petitioner's unlawful detention and demanding immediate judicial intervention.

20
21 **IV. IRREPARABLE HARM AND EQUITIES**

22 Prolonged detention inflicts core constitutional injury, as "freedom from
23

24 ¹ Austin Kocher, No, "Deportation Judges" Don't Exist—But That Won't Stop Trump's DOJ from Staffing the
25 Immigration Courts with an Army of Minions, AUSTIN KOCHER'S SUBSTACK (Jan. 20, 2026),
<https://austinkocher.substack.com/p/no-deportation-judges-dont-existbut>

26 ² Erin Snodgrass, Trump White House Refuses to Abide by 1 in 3 Court Orders Made Against Them, Truthout (July
27 22, 2025),
<https://truthout.org/articles/trump-white-house-refuses-to-abide-by-1-in-3-court-orders-made-against-them/>

imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [Due Process] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Every day Petitioner remains confined, his U.S. citizen fiancée Rosie Martinez and her children face imminent eviction from their Monterey Park home because Petitioner served as their primary financial support through 17 years of steady construction employment. *See* Hellerstein Decl. ¶¶ 5, 7, 9). No legitimate government interest justifies detaining this individual with zero criminal history who poses no public safety risk; indeed, public interest demands judicial oversight of biased executive enforcement decisions that punish community pillars rather than dangerous offenders.

V. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

1. Reject Respondents’ suggestion of mootness;
2. Convert the existing TRO into a preliminary injunction; and
3. Order one of the following: Petitioner’s immediate release from custody pending resolution of this habeas petition, without bond or electronic monitoring; or a new bond hearing within 7 days under 8 U.S.C. § 1226(a), where the government bears the burden of proving flight risk or dangerousness by clear and convincing evidence.

Additionally, Petitioner respectfully requests leave to appear remotely via videoconference for any scheduled hearings in-person hearings on this matter. Counsel, as a parent of an infant, faces considerable logistical challenges in traveling from Berkeley to Riverside (8 hours) and securing childcare for the duration of the hearing and travel time. In-person attendance would impose a substantial and undue hardship, whereas remote participation would ensure counsel’s full and effective advocacy without disruption to the Court’s calendar. This request is made in the interest

1 of judicial economy and to prevent unnecessary delay.

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3 Date: January 21, 2026

Respectfully Submitted,

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s/ Prerna Lal

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Attorney for Petitioner

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DECLARATION OF SERVICE

I hereby certify that on January 21, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will serve a copy of this document upon all counsels of record.

DATED this January 21, 2026, at Berkeley, California.

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