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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 NIMA RAFIEI,
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12 Petitioner,
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14 v.
15 CHRISTOPHER LAROSE, et al.
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17 Respondents.
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Civil Case No.: 26-cv-2333-JO

**Amended¹ Petition for a
Writ of Habeas Corpus**

27 ¹ Under Federal Rule of Civil Procedure 15, a party may amend its pleading once
28 as a matter of course within 21 days after service of a responsive pleading. Fed. R.
Civ. Pro. 15(a)(1)(A). In light of the government's insufficient pleading allegation,
Doc. 9 at 2–4, Mr. Rafiei submits the amended petition as of right.

INTRODUCTION

This Court previously granted Nima Rafiei’s habeas petition. *Rafiei v. LaRose*, 26-cv-0668-JO-BJW (S.D. Cal. February 20, 2026) at ECF No. 11. To redress his unlawful detention, this Court ordered that Mr. Rafiei receive an “individualized bond hearing before a neutral immigration judge where the government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk that cannot reasonably be addressed by bond or conditional release.” *Id.*

At the subsequent bond hearing, the immigration judge (“IJ”) expressed concerns about the gaps in the record related to Mr. Rafiei’s sponsor. In response, Mr. Rafiei—acting pro se—provided his sponsor’s phone number and asked the immigration judge to call the sponsor. The immigration judge did not do so. He then denied bond largely because he (1) didn’t “have any letters from your sponsors or any indications that they are willing to take you in”; (2) lacked “assurances that the sponsor is actually willing and able to take you in”; and (3) found it “unclear that you would even have a place to live.” Doc. 9-1 at 9–10.

Under the Ninth Circuit’s decision in *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024), “the question of whether a petitioner poses a flight risk is a question of law that is reviewable by [this] Court.” *Miri v. Bondi*, No. 26-cv-00698-MEMF-MAR, 2026 WL 622302, at *5 (C.D. Cal. Mar. 5, 2026). Thus, “[this] Court has jurisdiction to review the Immigration Judge’s determination under an abuse of discretion standard.” *Id.* Under this standard, the court “cannot reweigh evidence” but can determine “whether the immigration judge ‘applied the correct legal standard.’” *Id.* at *8 (quoting *Martinez*, 124 F.4th at 785); *see also Garcia v. Hyde*, 817 F.Supp.3d 112, 126 (D.R.I. Dec. 3, 2025) (“[T]he noncitizen can point to the IJ’s opinion itself and show that the IJ simply did not apply the correct standard to the facts.”) (quotations omitted). Here, by not calling

1 Mr. Rafiei's witness, then denying based on a lack of evidence from that witness,
2 the IJ abused its discretion.

3 **STATEMENT OF FACTS**

4 On February 20, 2026, this Court granted Nima Rafiei's habeas petition.
5 *Rafiei v. LaRose*, 26-cv-0668-JO-BJW (S.D. Cal. February 20, 2026) at ECF No.
6 11. To redress his unlawful detention, this Court ordered that Mr. Rafiei receive
7 an "individualized bond hearing before a neutral immigration judge where the
8 government bears the burden of establishing by clear and convincing evidence
9 that Petitioner is a danger to the community or a flight risk that cannot reasonably
10 be addressed by bond or conditional release." *Id.*

11 Mr. Rafiei received the bond hearing in due course. He represented himself.
12 Doc. 9-2 at 4–5.

13 At the beginning of the bond hearing, the court told Mr. Rafiei that he had
14 "the right to present evidence." *Id.* at 3. The IJ asked Mr. Rafiei whether he had
15 any evidence to present. *Id.* Mr. Rafiei replied, "Evidence of what?" *Id.* The judge
16 listed some examples, including evidence "[a]bout where you would live if you're
17 released." *Id.* at 4. The conversation then proceeded as follows:

18 MR. RAFIEI TO JUDGE: Those information are -- exist in the file, and
19 the person I'm going to go live with lives in Texas. I have the address.

20 JUDGE TO MR. RAFIEI: Okay. Do you have any letters from this
21 person?

22 ...

23 MR. RAFIEI TO JUDGE: No, but I have the -- I have his phone
24 number. We communicated. I talked to him and he said, "I am your
25 sponsorship, and you can stay with me."

26 *Id.* at 4. A little bit later, the judge asked again about the sponsor:

27 JUDGE TO MR. RAFIEI: Okay, sir. What kind of assurances do I have
28 that you actually do have a sponsor in Texas? Like, I don't have any
documents, or a letter from this person.

1 MR. RAFIEI TO JUDGE: I have his phone number. You can call him
2 and ask him for any letter or any document which the court requires
3 from him.

4 JUDGE TO MR. RAFIEI: Okay. What's his phone number, sir?

5 *Id.* at 5. Mr. Rafiei provided the phone number and name. *Id.* The IJ then asked
6 several questions about the sponsor, including how they knew each other, whether
7 they had spoken before, where exactly he lived, what he did for work, how old he
8 was, who lived with him, and how big his house was. *Id.* at 6–8. Mr. Rafiei could
9 answer some of these questions but not others. *Id.* But Mr. Rafiei knew that his
10 sponsor lived in Houston, Texas. *Id.* at 7. And he confirmed that he did “talk[] to
11 [the sponsor], and he said I will – I’ll accept your sponsorship.” *Id.* at 8. During
12 argument, Mr. Rafiei reiterated that his sponsor had told him, “I accept your
13 sponsorship, and also, I can provide you a ticket to come to Texas when you get
14 released from there.” *Id.* at 10.

15 After hearing argument, the IJ ruled. Though the IJ found that “almost all of
16 the *Matter of Guerra* factors do weigh against you in this case,” the IJ particularly
17 focused on the lack of information about the sponsor.

18 And ultimately, the court doesn't have any letters from your
19 sponsors or any indications that they are willing to take you in. So, the
20 court has no assurances that this sponsor is actually willing and able to
21 take you in. All right.

22 Ultimately, the court finds the government has met its burden, by
23 clear and convincing evidence, of showing that you are a flight risk.
24 And given your tenuous ties to anyone in the United States, it's unclear
25 that you would even have a place to live. So, the court does not find that
26 any amount of bond or alternative to detention would mitigate that flight
27 risk. So, unfortunately, the court is going to have to deny bond in this
28 case.

Id. at 10–11.

At no time did the IJ call the sponsor per Mr. Rafiei's request.

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ARGUMENT

I. The bond hearing Mr. Rafiei received was fundamentally unfair and violated the Due Process Clause of the Fifth Amendment.

As the IJ himself acknowledged at the hearing, Doc. 9-2 at 13, noncitizens have the right “to present evidence on [their] own behalf” in proceedings before an immigration judge. 8 U.S.C. § 1229a(b)(4)(B). Here, Mr. Rafiei attempted to present evidence in the form of a witness, his sponsor. *Id.* at 5. He provided the IJ with the witness’s phone number and asked the IJ to call the sponsor. *Id.* The IJ took the phone number down. *Id.* And the IJ did not provide any reason why it would be practically or procedurally inappropriate to make that call. *Id.* But, without explanation, the IJ did not call the sponsor. The IJ then denied the request for bond largely because Mr. Rafiei had not provided enough information about his sponsor. *Id.* at 10–11.

That was an abuse of discretion. Calling witnesses telephonically is normal in immigration proceedings. Guidance on remote hearings posted on the Department of Justice (“DOJ”) website provides that “[h]earings before immigration judges can be held both in-person, and with one or more participants appearing by video or telephone from different locations outside the court.” Exh. A at 1. “An immigration judge should accommodate a request for a witness to appear remotely where such a request is reasonable.” *Id.* at 2.

Here, the request was reasonable. Mr. Rafiei, as a detained pro se petitioner, deserved some flexibility. “[I]f the [noncitizen] is proceeding pro se, the IJ has an obligation to fully develop the record, meaning the IJ must scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts.” *Zamorano v. Garland*, 2 F.4th 1213, 1226 (9th Cir. 2021) (cleaned up). And the IJ had basic questions for the sponsor that could easily have been handled via phone, like whether the sponsor had actually agreed to host Mr. Rafiei. Doc. 9-2 at 5–8.

Just as importantly, the immigration judge provided no reason why he could not accommodate the request to call a witness telephonically. Indeed, after taking down the number, the IJ said nothing at all about the request to call the sponsor. When it comes to denying immigrants' requests for procedural accommodations—even discretionary ones—"an IJ's failure to state a reasoned basis for her decision may constitute an abuse of discretion." *Ahmed v. Holder*, 569 F.3d 1009, 1014 (9th Cir. 2009) (finding an abuse of discretion when the IJ denied a continuance). "Here, the IJ abused [his] discretion by failing to provide any explanation for [his] decision, and failing to take into account any of the facts and circumstances of [Mr. Rafiei's] case that were relevant to the grant or denial of a" request to call a witness telephonically. *Id.*

II. Mr. Rafiei was not required to exhaust this argument at the BIA.

In the return to the original petition, the government makes two, mutually inconsistent exhaustion arguments.

First, the government argues that this Court lacks jurisdiction to decide this habeas petition because Mr. Rafiei did not exhaust, and exhaustion is jurisdictional. Doc. 9 at 4–5. But as the government acknowledges just a few paragraph later, *id.* at 6, exhaustion is not jurisdictional in this context; it is prudential. *Castro-Cortez v. I.N.S.*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated in other part by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Furthermore, the Ninth Circuit held in *Martinez v. Clark* that "the district court[]" has jurisdiction to "review . . . the BIA's 'dangerousness' determination"—and, by logical implication, flight determinations—"for abuse of discretion." 124 F.4th 775, 779 (9th Cir. 2024). The government does not point to any law or principle other than prudential (i.e., non-jurisdictional) exhaustion to explain why the same conclusion would not hold for review of IJ flight determinations. This argument is meritless.

Second, after acknowledging that exhaustion is in fact prudential, the government asks this Court to enforce exhaustion "because agency expertise is

1 required” to resolve the question presented in this petition. Dkt. 9 at 7. But no
2 “agency expertise” is needed to understand the problem here: that an IJ ignored a
3 reasonable request to call a key witness in violation of Mr. Rafiei’s right to present
4 evidence. What’s more, this Court has authority to ensure that its orders are
5 enforced independent of the BIA’s review. Thus, requiring Mr. Rafiei to appeal the
6 bond determination would only waste time and further the prolonged detention that
7 triggered this Court’s Order granting habeas.

8 This is precisely what a district court concluded in *Miri v. Bondi*, No. 5:26-
9 CV-00698-MEMF-MAR, 2026 WL 622302 (C.D. Cal. Mar. 5, 2026). There, the
10 district court found that “requiring [petitioner] to go before the Board of
11 Immigration Appeals would prolong his unconstitutional detention, thereby
12 causing irreparable injury.” *Id.* at *11. What’s more, the fact that his challenge
13 “involves a legal question” and was not “fact-intensive” weighed against
14 requiring exhaustion. *Id.* Thus, the district court concluded that he was “not
15 required to exhaust administrative remedies given the questions of law at issue.”
16 *Id.*

17 Here, Mr. Rafiei has been detained nearly 15 months—almost *thirteen*
18 *months longer* than the noncitizen in *Miri*. *Id.* at *1. Thus, requiring a BIA appeal
19 would “prolong his unconstitutional detention, thereby causing irreparable
20 injury.” *Id.* at *11. And as in *Miri*, the challenge here is not “fact-intensive”—
21 indeed, this Court need only read the transcript of the bond hearing to resolve it.
22 *See* Doc. 9-2. So as in *Miri*, exhaustion to the BIA is not required.

23 **III. As in *Miri*, *Garcia*, and *Zheng*, this Court should order Mr. Rafiei’s**
24 **immediate release.**

25 Courts are increasingly ordering release in lieu of a bond hearing. *See*,
26 *e.g.*, *Hernandez-Garcia v. Warden*, No. 26-cv-1248-JO-BLM, ECF No. 11
27 (Mar. 26, 2026); *Izquierdo Mendez v. Casey*, No. 26-cv-1731-JO-SBC, ECF
28 No. 6 (Mar. 30, 2026). This is especially true where courts are finding the IJ’s

1 failure to apply the correct legal standard violated due process. For instance,
2 the district court in *Miri v. Bondi* ordered the petitioner’s “prompt release”
3 and prohibited the government from redetaining him “absent compliance with
4 due process and his legal protections.” No. 26-cv-00698-MEMF-MAR, 2026
5 WL 622302, at *11 (C.D. Cal. Mar. 5, 2026). The court found this to be “the
6 remedy that will best return Miri to the status quo and restore his position as it
7 was prior to the detention.” *Id.*

8 The District of Rhode Island did the same when facing similar bond
9 hearing violations late last year. *Garcia v. Hyde*, __ F.Supp.3d __, 2025 WL
10 3466312, at *11 (D.R.I. Dec. 3, 2025). In so doing, it reasoned, “Given the
11 due process violations that pervaded his bond hearing, the Court finds that
12 [Petitioner’s] immediate release is appropriate.” *Id.* It cited to *Morrissey v.*
13 *Brewer*, 408 U.S. 471, 481 (1972), for the proposition that “due process is
14 flexible and calls for such procedural protections as the particular situation
15 demands.” *Id.* It noted, “The Court is mindful that, in recent months, IJs have
16 faced enormous pressure from the Executive Branch to dismiss cases quickly
17 and rule in certain ways.” *Id.* (footnotes omitted). “However, ‘[d]ue process is
18 not satisfied . . . by rubberstamp denials [of bond],’ and IJs are not absolved of
19 their duty to ensure that noncitizens receive constitutionally adequate bond
20 hearings.” *Id.* (internal alterations in original) (quoting *Chi Thon Ngo v. INS*,
21 192 F.3d 398 (3d Cir. 1999)).

22 In *Zheng v. Rokosky*, No. 26-cv-01689, 2026 WL 800203, at *3 (D.N.J.
23 Mar. 23, 2026), the district court similarly held that the petitioner’s five-month
24 detention had “become so unreasonable” that “the only just remedy in these
25 circumstances is immediate release.” *Id.* at *8. It explained that “Respondents
26 have now violated Petitioner’s due process rights twice: first when they initially
27 detained him unlawfully under § 1225(b), and then again when they deprived him
28 of a constitutionally adequate bond hearing.” *Id.* It noted that “[c]ourts across the

1 country confronting due process violations akin to that here have recognized that
 2 a new hearing would either be unnecessary, futile, or an inadequate remedy.” *Id.*
 3 at *10 (collecting cases). Not only was the record “entirely devoid of any
 4 individualized justification for Petitioner’s continued detention,” there was no
 5 longer “any reason to believe that a second hearing would be fundamentally fair.”
 6 *Id.* Given that Respondents were “given an opportunity to cure their earlier
 7 constitutional violation by providing Petitioner a fundamentally fair bond
 8 hearing” but “woefully failed to do so,” the court declined to give them a “third
 9 bite at the apple” and ordered immediate release. *Id.* at *11.

10 Here, Mr. Rafiei has been detained almost *three times longer* than the
 11 petitioner in *Zheng*. So as in *Zheng*, his detention has “become so unreasonable”
 12 that “the only just remedy in these circumstances is immediate release.” *Id.* at *8.
 13 And just as in *Zheng*, Respondents were “given an opportunity to cure their earlier
 14 constitutional violation by providing [Mr. Rafiei] a fundamentally fair bond
 15 hearing” but “woefully failed to do so,” and this Court should decline to give
 16 them a “third bite at the apple.” *Id.* at *11. Immediate release is “the remedy that
 17 will best return [Mr. Rafiei] to the status quo and restore his position as it was
 18 prior to the detention.” *Miri*, 2026 WL 622302, at *11. *Id.*

19 CLAIM AND PRAYER FOR RELIEF

20 For these reasons, this Court should grant Mr. Rafiei’s habeas petition and
 21 order his immediate release. Should this Court decline to order immediate release,
 22 it should at a minimum order a new bond hearing.

23 Respectfully submitted,

24 Dated: May 15, 2026

25 s/ Katie Hurrelbrink

26 Katie Hurrelbrink

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