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

NIMA RAFIEI,

Petitioner,

v.

CHRISTOPHER LAROSE, et al.

Respondents.

Civil Case No.: 26-cv-2333-JO

**Traverse in Support of
Amended Petition for a
Writ of Habeas Corpus**

I. The government is wrong on the merits.

Mr. Rafiei's amended petition identified an abuse of discretion occurring in his bond proceedings: Though Mr. Rafiei asked the immigration judge to call his sponsor as a witness, the immigration judge did not do so. The immigration judge then denied bond largely because he did not have enough information about the witness.

The government's Return makes three arguments in favor of denying the petition, none of which persuade.

First, the government challenges this Court's jurisdiction, on the ground that *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024), does not apply to (1) district court review, or (2) review of IJ proceedings. But *Martinez* explicitly applied its holding to district court review, stating that "the district court[]" has jurisdiction to "review . . . the BIA's 'dangerousness' determination for abuse of discretion." *Id.*

1 at 779. And many courts have held that *Martinez* review also applies to immigration
2 judge decisions. *See, e.g., Singh v. LaRose*, No. 26-CV-1425 JLS (GC), 2026 WL
3 1387428, at *2 (S.D. Cal. May 18, 2026); *Miri v. Bondi*, No. 5:26-CV-00698-
4 MEMF-MAR, 2026 WL 622302, at *5 (C.D. Cal. Mar. 5, 2026).

5 That makes sense. *Martinez* holds that 8 U.S.C. § 1226(e) doesn't strip
6 federal courts of jurisdiction to conduct abuse-of-discretion review of mixed
7 questions of fact and law in bond proceedings. 124 F.4th at 779–80. The
8 government provides no legal or logical reason why § 1226(e) (or any other
9 statute) would strip jurisdiction when it comes to IJ proceedings, but not to BIA
10 proceedings.

11 Second, the government asserts that Mr. Rafiei did not establish a due
12 process violation. But the government does not make any legal argument or cite
13 any authority in support of that position. The government says, in full:

14 A call, or lack thereof, does not amount to a due process violation. The
15 purported sponsor was not, as the judge noted, a close family tie or other
16 closely connected or verified individual but rather Petitioner's "father's
17 friend's son" of whom Petitioner did not "know where [his] father found
18 this person" or how old the person was. Transcript at pp. 5-6.
Dissatisfaction with the ruling does give rise to a claim for relief.
Petitioner has alleged nothing more.

19 Doc. 15 at 3.

20 Ironically, it is the government that seeks to litigate the merits of whether
21 Mr. Rafiei had a proper sponsor. Mr. Rafiei raised only a legal challenge to the
22 process employed in this case: As the IJ himself acknowledged at the hearing, Doc.
23 9-2 at 13, noncitizens have the right "to present evidence on [their] own behalf" in
24 proceedings before an immigration judge. 8 U.S.C. § 1229a(b)(4)(B). But this
25 immigration judge denied Mr. Rafiei that opportunity without "stat[ing] a reasoned
26 basis for [the] decision," an omission that "may constitute an abuse of discretion."
27 *Ahmed v. Holder*, 569 F.3d 1009, 1014 (9th Cir. 2009) (finding an abuse of
28 discretion when the IJ denied a continuance). And though *Martinez* does not require

1 a due process violation—only an abuse of discretion—arbitrarily denying a
 2 noncitizen their statutory right to call witnesses constitutes a due process violation,
 3 too. *Cf. Ponte v. Real*, 471 U.S. 491, 492 (1985) (“[T]he Due Process Clause of the
 4 Fourteenth Amendment requires that prison officials at some point state their reason
 5 for refusing to call witnesses requested by an inmate at a disciplinary hearing[.]”).

6 Third, the government repeats the same exhaustion arguments raised in the
 7 return to the original petition. The amended petition already addressed these
 8 arguments, including by questioning why BIA expertise would assist the Court in
 9 deciding the particular statutory claim raised here. To that question, and to the other
 10 arguments raised in the amended petition, the government gives no answer.

11 **II. The government does not dispute that release is the proper remedy.**

12 As the petition explained, district courts are increasingly ordering
 13 release in lieu of a bond hearing when the immigration judge provides a
 14 deficient hearing in the first instance. *See, e.g., Hernandez-Garcia v. Warden*,
 15 No. 26-cv-1248-JO-BLM, ECF No. 11 (Mar. 26, 2026); *Izquierdo Mendez v.*
 16 *Casey*, No. 26-cv-1731-JO-SBC, ECF No. 6 (Mar. 30, 2026). The petition
 17 therefore requested release in this case, too. The government did not at all
 18 respond to that argument. This Court should therefore deem the matter
 19 forfeited and order release.

20 Respectfully submitted,

21
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s/ Katie Hurrelbrink
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