

1 **Armilla Staley-Ngomo**
California Bar No. 259686
2 **Federal Defenders of San Diego, Inc.**
225 Broadway, Suite 900
3 San Diego, California 92101-5030
Telephone: (619) 234-8467
4 Facsimile: (619) 687-2666
Armilla_Staley-Ngomo@fd.org

5 Attorneys for Mr. Hurtado Anchico
6

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

9
10 **JAIDIVERT HURTADO**
ANCHICO,

11 Petitioner,

12 v.

13 **MARKWAYNE MULLIN,**
14 Secretary of the Department of
Homeland Security, **TODD**
15 **BLANCHE,** Acting Attorney
General, **TODD M. LYONS,** Acting
16 Director, Immigration and Customs
Enforcement, **JESUS ROCHA,**
17 Acting Field Office Director, San
Diego Field Office, **CHRISTOPHER**
18 **LAROSE,** Warden at Otay Mesa
Detention Center,

19 Respondents.
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Civil Case No.: 26-cv-3559-LL-JAC

**Amended Motion to Enforce
Order Granting Bond
Hearing**

INTRODUCTION

When this Court granted Mr. Hurtado's petition for a writ of habeas corpus in part on May 20, 2026, it issued an Order requiring a bond hearing at which the immigration judge ("IJ") shall, *inter alia*, "consider alternative conditions of release." Exh. A (Order Denying in Part and Denying in Part Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, Case No. 26-cv-02502-LL-DDL, ECF No. 6, at 2.) But the IJ did not comply with this Order.

During the bond hearing, Mr. Hurtado's immigration lawyer told the IJ that Mr. Hurtado had filed for asylum, withholding of removal, and other relief under the Convention Against Torture. His U.S. citizen wife had also filed an I-130 (Petition for Alien Relative) on his behalf. Mr. Hurtado's lawyer argued he was not a flight risk or danger to the community because he has been married to a U.S. citizen since 2022, has a familial relationship with all her family in the U.S. (including their fifteen-year-old stepdaughter and four-year-old daughter), and because he had no one left in Colombia. Mr. Hurtado's lawyer also argued he had resided in the U.S. since 2024, had appeared at all of his prior immigration court hearings, and had no violent criminal history (other than a twenty-year-old drunk-in-public conviction) in the U.S. or in any other country—a point which government counsel conceded. The IJ never addressed *any* of these arguments, nor did he consider or explain why "alternative conditions of release" would not prevent Mr. Hurtado from posing a flight risk or a danger to the community.

1 Because the IJ failed to comply with this Court's Order,
2 Mr. Hurtado respectfully moves this Court to enforce its Order by
3 ordering Mr. Hurtado's immediate release. At a minimum, this Court
4 should order a new individualized bond hearing in front of a different
5 IJ.
6

7 ARGUMENT

8 The IJ failed to comply with this Court's Order because it did not
9 "consider alternative conditions of release" during Mr. Hurtado's bond
10 hearing.¹

11 During the hearing, Mr. Hurtado's immigration lawyer argued he
12 was not a flight risk or danger to the community. More specifically, his
13 attorney argued he was not a flight risk based on the following:
14

- 15 • Mr. Hurtado is "married to a U.S. citizen." Exh. B, Bond
16 Hearing Transcript, at 01:50;
- 17 • Mr. Hurtado and his U.S. citizen wife have been married for
18 three years, and were "married in Colombia in 2023." Exh.
19 B at 01:52;
- 20 • "They both came [to the U.S.] in 2024. He has been here for
21 two years. Her family is here. He has familiar relationships
22 with all of her family. Um, he's also appeared at all of his
23 prior hearings." Exh. B at 01:59; and,
- 24 • Mr. Hurtado "has no one left in Colombia." Exh. B. at 02:19.

25 Mr. Hurtado's lawyer also argued he was not a danger to the
26

27 ¹ The IJ also failed to conduct an individualized balancing test
28 according to the factors articulated in *Matter of Guerra*, 24 I. & N. Dec.
37 (BIA 2006).

1 community or national security based on the following:

- 2 • “He has no criminal history of any violence whatsoever.”
3 Exh. B at 02:36;
- 4 • He only had one “drunk in public” conviction which involved
5 him being charged when he was in his car. Exh. B at 02:41–
6 02:50; and,
- 7 • “He has no other criminal history in any country....the
8 United States...in the world.” Exh. B at 02:51–02:56.

9
10 Indeed, government counsel confirmed Mr. Hurtado’s “drunk in
11 public” conviction “was over 20 years old,” said he “was not sure what
12 [Mr. Hurtado’s] relief is,” and noted Mr. Hurtado would “ultimately”
13 “be able to immigrate” to the U.S. “if he is married to a United States
14 citizen.” Exh. B at 03:09–04:44.

15
16 Rather than engage with any of the parties’ arguments or
17 consider and explain any alternatives to detention, the IJ began
18 questioning Mr. Hurtado regarding the alleged circumstances of his
19 February 2026 arrest. Exh. B at 04:45–10:11. Importantly, before the
20 IJ began questioning Mr. Hurtado, his attorney clarified there was
21 “nothing in the record” that the two individuals in Mr. Hurtado’s car
22 had been “illegal,” said there had been “no process,” and argued there
23 had been “no follow-up on what they did with those two individuals,”
24 including whether they had a court date before a judge, *inter alia*, like
25 Mr. Hurtado. Exh. B at 04:57–05:20. The IJ still proceeded to question
26 Mr. Hurtado (based solely on the arresting agent’s uncorroborated
27
28

1 report), found Mr. Hurtado was a danger to the community and a flight
2 risk, and denied bond. Exh. B at 10:12–11:50.²

3 But nowhere in the IJ's oral decision did he ever address or
4 consider alternatives to detention. Instead, the IJ's oral decision
5 focused almost exclusively on Mr. Hurtado's credibility and the alleged
6 circumstances of his arrest:
7

8
9 Okay. The court does not find the respondent's testimony to
10 be credible in light of the evidence submitted here. The
11 respondent was, uh, generally non-responsive and his
12 answers, they simply uh, do not make sense. Uh, the
13 respondent says he's playing soccer at a house. Um, driving
14 180 miles from LA to play soccer at someone's house and
15 then driving all the way down to go to a casino right on the
16 border, um, simply is not matching. The court notes that,
17 uh, his story does not match up with the, um, recorded--
18 [inaudible] recorded on 2/13 in his place. There were two
19 individuals in camouflage in his back seat hiding down.
20 The respondent simply denies that. The court notes that it
21 is concerned the respondent is not being truthful with the
22 court. Additionally, uh, smuggling is a very, um, dangerous
23 incident. People are being brought into the country
24 without, um, any sort of background check. They certainly
25 could have any motive to come into the United States.
26 Ultimately, the court finds that the respondent has not met
27 his burden of showing he's not a danger to the community
28 or a flight risk, and the court is going to deny bond at this
time.

Exh. B at 10:12–11:50 (Spanish language interpretation omitted).³

² See, e.g., *Picado v. Hyde*, No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7 (D.R.I. Feb. 9, 2026) (“Without more, an uncorroborated police report is simply not clear and convincing evidence sufficient for a finding of dangerousness.”).

³ Not only are these factors untethered to Mr. Hurtado's flight risk or

1 In other words, despite the fact that: 1) this Court explicitly
 2 ordered the IJ to “consider alternative conditions of release,” Exh. A at
 3 2; 2) Mr. Hurtado’s immigration lawyer presented arguments in
 4 support of why he was not a flight risk or danger to the community
 5 during the bond hearing; and 3) the IJ *still* failed to consider or explain
 6 why alternatives to detention would not alleviate any potential flight
 7 risk or danger. This simply did not comply with this Court’s Order that
 8 the IJ “consider alternative conditions of release.” Exh. A at 2.

10 CONCLUSION

11 Because the IJ failed to comply with this Court’s Order to
 12 “consider alternative conditions of release,” Mr. Hurtado moves this
 13 Court to enforce its Order by ordering Mr. Hurtado immediately
 14 released or, at a minimum, order that he receive a new individualized
 15 bond hearing before a different IJ.
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17
 18 Respectfully submitted,

19 Dated: July 10, 2026

20 s/ Armilla Staley Ngomo
 21 Armilla Staley-Ngomo
 22 Federal Defenders of San Diego, Inc.
 23 Attorneys for Mr. Hurtado
 24 Email: Armilla_Staley-Ngomo@fd.org

25
 26 danger, see, e.g., *Hernandez v. Session*, 872 F.3d 976, 990 (9th Cir.
 27 2017) (any detention incidental to removal must “bear[] [a] reasonable
 28 relation to [its] purpose”) (quoting *Zadvydas*, 533 U.S. 678, 690 (2001)),
 the IJ’s dangerousness finding was also improperly based on Mr.
 Hurtado’s arrest alone, without a conviction. *Ortega-Rangel v.*
Sessions, 313 F. Supp. 3d 993, 1004–05 (N.D. Cal. 2018).