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December 9, 2025

Via ECF
Honorable Susan D. Wigenton, U.S.D.J.
United States District Court
Martin Luther King Bldg. & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: Guaman Naula v. Noem, et al., Civil No. 25-16792 (SDW)

Dear Judge Wigenton,

In accordance with practice under the Local Civil Rules we would respectfully request the Court to accept this letter brief in support of the Petitioner's emergency motion to enforce the Court's November 12, 2025 order by conducting a bond hearing and releasing Mr. Guaman Naula on reasonable bond and related alternatives to detention or releasing him.

PRELIMINARY STATEMENT

On November 12, 2025, the Court granted Petitioner's habeas corpus petition. *See* ECF No. 9. The purpose of the underlying habeas corpus petition was to determine the eligibility of bond. This Court ordered that the Respondent treat Petitioner as detained under U.S.C 1226(a) and provide him with an individualized bond hearing. In turn, the Immigration Judge denied bond:

“The Court finds Respondent has not demonstrated that he has any potential immigration relief available to him, does not appear that he has any immediate relatives with legal status, and the evidence is insufficient that he is planning to file for asylum. The Council during the argument argue that his client plans to file for asylum. The evidence is

insufficient that he has filed for asylum nor that he has the intention to file for asylum other than through Council's statements which are not considered evidence in this case. The evidence is void that there is any other possible immigration relief available to the respondents. For all of these reasons, the Court finds the respondents is a flight risk and therefore is not eligible for bond.” Exhibit B Bond Hearing Transcript.

As this brief will demonstrate, the government did not comply with this order and did not follow controlling precedent governing a bond hearing judicially ordered as a matter of due process. Given this demonstrated failure to carry out the Court's order, the Court should order immediate release or conduct a bond hearing and order Mr. Guaman Naula released as other courts have done where a legally adequate bond hearing was not conducted and due process requirements were not observed at that hearing. *See, e.g., Luciano-Jiminez v. Doll*, 543 F.Supp. 3d 69 (M.D. Pa 2021); *German Santos v. Lowe*, 2020 U.S. Dist. LEXIS 140236 (M.D. Pa 2020); *Wilkins v. Doll*, 2018 U.S. Dist. LEXIS 115708 (M.D. Pa 2018); *Guerrero Sanchez v. Sabol*, 2016 U.S. Dist. LEXIS 177914 (M.D. Pa 2016); *Hechavarria v Whitaker*, 358 F.Supp.3d 227 (W.N.D.Y. 2016). In any event, Mr. Guaman Naula should not remain detained at public expense based upon an Immigration Judge’s order who refused to comply with this Court’s Order. In the event that the Immigration Judge had complied with this Court’s Order it is undeniable that the Petitioner would have been released on bond. The Petitioner has resided in the United States for many years in the vicinity of his Uncle. If released, he can return to live with his Uncle who provided a declaration affirming this fact. Additionally, the Petitioner has never been arrested and thus does not present a danger.

Petitioner is detained at Folkston D Ray ICE Processing Center. A detailed report from the Office of Inspector General, Department of Homeland Security has highlighted the human right violations that occur at this facility. These violations “comprise the health, safety, and rights of detainees.” “Folkston facilities were unsanitary and dilapidated, with torn mattresses, water

leaks and standing water, mold growth and water damage, rundown showers, mold and debris in the ventilation system, insect infestations, lack of access to hot showers, inoperable toilets, an inoperable thermometer display on a kitchen freezer, and an absence of hot meals. Facility medical staff did not provide timely access to specialty care or adequate mental health care for detainees. Folkston did not provide timely or complete responses to detainee grievances and requests. Folkston also did not consistently provide required services to detainees in segregation and inappropriately handcuffed detainees.” Exhibit C. In fact, one detainee died in custody.

Given that the Immigration Judge erred in his bond decision and as a result, the Petitioner remains detained in unsafe and egregious conditions, Opposing Counsel should be afforded the shortest possible time to respond.

ARGUMENT

THE COURT SHOULD ENFORCE THE GRANT OF HABEAS CORPUS BY ORDERING A BOND HEARING AND RELEASING THE PETITIONER

As many other District Courts in both the Third and Second Circuits have done, this Court should enforce the grant of habeas corpus by conducting a bond hearing and releasing Mr. Guaman Naula on a reasonable bond with appropriate reporting. As this brief will demonstrate, the Court has the continuing power to enforce its prior grant of habeas corpus. In other words, this Court has the power to determine whether the bond hearing before Immigration Judge Ryan Fisher comports with legal and constitutional requirements for bond hearings in the case of a foreign national whose detention under 8 U.S.C. § 1226(a) has become unconstitutionally prolonged. On November 12, 2025, this Court ordered that: Respondents shall treat Petitioner as detained under 8 U.S.C. § 1226(a) and provide him with an individualized bond hearing before

an immigration judge. *See* ECF No. 9. The Immigration Judge denied bond stating, “flight risk and not eligible for bond.” Exhibit A.

As this brief will demonstrate the bond hearing afforded Mr. Guaman Naula fell far short of those requirements in that 1) the Immigration Judge failed to consider alternatives to detention, 2) the Immigration Judge’s decision regarding risk of flight is contrary to number BIA decisions, and 3) the burden of proof by clear and convincing evidence that this Court required was not applied.

A. The Court Retains Jurisdiction To Enforce The Grant of Habeas Corpus

This Court retains jurisdiction as a matter of law to enforce the November 12 order since District Courts retain the power to determine that their orders have been obeyed. As the Third Circuit has made clear, “A federal court always retains jurisdiction to enforce its lawful judgments including habeas judgments, [and] the court has the authority to see that its judgment is fully effectuated.” *Gall v. Scroggy*, 603 F.3d 346, 352 (6th Cir. 2010). *See also Ousman*, *supra*, *Guerrero Sanchez v. Sabol*, 2016 U.S. Dist. LEXIS 177914 (M.D. 2016) and *German Santos v Lowe*, 2020 U.S. Dist. LEXIS 140236 (M.D. Pa 2020). Indeed, as *Wilkins v. Doll*, 2018 U.S. Dist. LEXIS 115708, at *2 (M.D. Pa 2018) summarizes the law in this area, “[t]here is no question that [a District Court] has the power to enforce its writs of habeas corpus.”

B. The Immigration Judge’s Failure to Obey the Court Order

On November 12, 2025, this Court ordered that: Respondents shall treat Petitioner as detained under 8 U.S.C. § 1226(a) and provide him with an individualized bond hearing before an immigration judge. *See* ECF No. 9. Despite this Order, the Immigration Judge denied bond stating, “a “flight risk and not eligible for bond.” Exhibit A.

This Court should hold a bond hearing. In *Leslie v. Holder*, the District Court states “...we are empowered to conduct bail proceedings in habeas corpus proceedings brought by immigration detainees.” 3:11-CV-249 * 10 (M.D. PA 2012). Similar to the facts in the instant case, the Petitioner in *Leslie* was detained for a prolonged period of time, and filed a petition for habeas corpus. The District Court ultimately conducted a bail hearing. (In citing *Leslie v. Attorney General*, 2012 WL 898614 the District Court states “Here, the law of the case, as defined by the mandate of the court of appeals is clear: ‘Leslie's appeal will be remanded to the District Court with instructions to conduct an individualized bond hearing as required by Diop within ten days of the date when this opinion and order are filed....’”) *Id.* at 12. Similarly, the Third Circuit Court of Appeals in *Chavez Alvarez v. Warden York County Prison*, “remanded with instruction to enter an order granting the writ of habeas corpus and ensure that Chavez-Alvarez is afforded, within ten days of the entry of this order, a hearing to determine whether, on evidence particular to Chavez-Alvarez, it is necessary to continue to detain him to achieve the goals of the statute”) *Chavez Alvarez v. Warden York County Prison*, 14-1402 * 21 (3rd Cir. 2015).

Furthermore, the Court in *Flores-Powell v. Chadbourne*, granted the Petitioner’s Habeas Petition, and went on to hold that “the court will conduct a hearing to determine whether Flores is dangerous to the community or a flight risk” 677 F.Supp 2d 455 (2010). In deciding to conduct the bond hearing, the Court in *Flores-Powell* relied on the reasoning in *Alli v. Decker*, 644 F. Supp. 2d 535 (M.D. Pa. 2009); citing to *Alli*’s decision:

“Supervision of the reasonableness of detention through the habeas process also provides justified protection of the alien's liberty interest and conserves judicial resources. If the remedy for unreasonable detention were an order directing a bond hearing under § 1226(a), an alien who has already demonstrated that his detention is no longer reasonable would remain detained pending an initial custody determination by the DHS district director, 8 C.F.R. § 236.1(d)(1), a

hearing before an immigration judge, *id.*, the IJ's decision, and a potential appeal to the BIA, *id.* § 236.1(d)(3). In addition, ... the only recourse for an alien dissatisfied with the outcome of his bond hearing would be to return to court again and file another habeas action. *Cf. Ly*, 351 F.3d at 272. A bond hearing before the habeas court avoids this circuitous and potentially lengthy process. The habeas court's determining whether a petitioner is entitled to release also serves the "'historic purpose of the writ,' namely, 'to relieve detention by executive authorities without judicial trial.'" *Zadydas*, 533 U.S. at 699, 121 S.Ct. 2491. See, *Flores-Powell*, 677 F.Supp 2d 455 (2010).

Therefore, as is clear from existing case law, this Court is well within its jurisdiction to conduct a bond hearing, and it would be in the interest of judicial economy.

C. The Bond Hearing Requirements Pursuant to 1226(a)

The alien or the alien's representative should make an oral statement (an "offer of proof" or "proffer") addressing whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for future immigration proceedings, and whether the alien poses a danger to national security. Exhibit D.

The Board explained that an immigration judge may set bond to ensure the alien will appear for subsequent proceedings. Bond proceedings are distinct from removal proceedings — the question of whether an alien should be released on bond is separate from the question of whether the alien should remain in the United States. The Board described bond hearings as "less formal than removal proceedings..." "[a]n alien requesting a redetermination of his or her custody status under section 236(a) 'must establish to the satisfaction of the Immigration Judge and the Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.'" *Id.* at 804, *quoting Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018).

In *Matter of Guerra*, the Board listed several factors that immigration judges may consider in determining whether an alien should be released on bond and, if so, to what amount the bond should be set:

- A. Whether the alien has a fixed address in the United States;
- B. The alien's length of residence in the United States;
- C. The alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future;
- D. The alien's employment history;
- E. The Alien's record of appearance in criminal court;
- F. The alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses;
- G. The alien's history of immigration violations; Any attempts by the alien to flee prosecution or otherwise escape from authorities; and The alien's manner of entry to the United States. *Matter of Guerra*, 24 I&N Dec. at 40.
- H. In addition to the nine factors listed above, the Board has also held that an immigration judge may weigh the likelihood that the alien would be granted relief from removal. *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) [[PDF version](#)].

Furthermore, the Third Circuit also made clear that to "presume dangerousness to the community and risk of flight based solely on [a petitioner's] past record does not satisfy due process." *Ngo*, 190 F.3d at 398-99. *See also Santos, supra; Sanchez, supra; Anariba v. Shanahan*, 2017 U.S. Dist. LEXIS 117032 at 10 (S.D.N.Y. 2017).

Finally on both danger to the community and risk of flight consideration should be given to alternatives to detention such as electronic monitoring and reporting. *See, Ousman, supra; Hechavarria v. Whitaker*, 358 F.Supp. 3d 227, 240 (W.D.N.Y. 2019). Indeed, this sound requirement puts into practice in the immigration context the holding by the Supreme Court in *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 816 (2000) that "[w]hen a plausible,

less restrictive alternative is offered to a" regulation burdening a constitutional right, "it is the Government's obligation to prove that the alternative will be ineffective to achieve its goals.").

D. Petitioner's Bond Hearing Was Legally Deficient

Petitioner's bond hearing did not comply with the requirements governing such a proceeding for several reasons as set forth below.

1. The Immigration Judge Failed to Consider Alternatives to Detention Much Less Find Them Inadequate

Just as in *Ousman* and *Hechavania*, Judge Fisher failed to consider alternatives to detention which the Petitioner repeatedly urged throughout the detention, much less find that such alternatives were somehow inadequate. This failure alone renders the bond hearing legally defective as *Ousman* and *Hechavarria* persuasively hold. Indeed, as *Hechavarria* 358 F.Supp.3d at 242 cogently explained, the bond hearing afforded the petitioner "was a due process hearing where the government bore the burden of proof and where the IJ was required to consider alternatives before resorting to detention." Under these circumstances, at the very least, "the IJ was required to determine whether the government's evidence demonstrated that any and all proffered alternatives to detention would not protect the public. The IJ did not do that. And [the petitioner] therefore was not given the hearing to which he was entitled." *Hechavarria*, 358 F.Supp. at 242. *See also Blanton v. Barr*, 434 F.Supp.3d 30, 39 (W.D.N.Y. 2020). (bond hearing defective because IJ did not consider "whether there was a less restrictive alternative to detention"); *Navarijo-Orantes v. Barr*, 2019 U.S. Dist. LEXIS 192856 at 7 ("The decision maker must consider-and must address in any decision-whether there is clear and convincing evidence that no less-restrictive alternative to physical detention, including release on bond in an amount the petitioner can reasonably afford, with our without conditions, would also reasonably address those purposes.).

See also M-S-D-, AXXX XXX 451 (BIA Jan. 28, 2020) (upholds finding that respondent was a flight risk but remands for further consideration of practicability of alternatives to detention) (Goodwin) *M-A-H-*, AXXX XXX 083 (BIA Sept. 19, 2019) (remands for further consideration of bond request because IJ failed to consider alternatives to detention) (Rosen) *G-A-G-*, AXXX XXX 636 (BIA Feb. 17, 2017) (IJ failed to fully consider respondent's request to be released on conditions as an alternative to detention) (Greer) *S-V-V-*, AXXX XXX 415 (BIA April 29, 2015) (remands for further consideration of motion to ameliorate bond conditions and whether posting of a monetary bond would be an appropriate alternative to ISAP) (Grant). Exhibit E.

Unfortunately, this is precisely what happened to Mr. Guaman Naula, with Judge Fisher completely ignoring the reasonable alternatives, alternatives such as electronic monitoring. Moreover, as *Ousman* cogently concludes, 2020 U.S. Dist. LEXIS 171243 at 9-10, "Because there is no evidence that the JJ considered less restrictive alternatives to detention-such as release subject to specific conditions, including regular reporting or monitoring-the Court finds that the bond hearing failed to comply with due process." *See also Leslie v. Holder*, 865 F.Supp.2d 627, 641 (M.D. 2012) which authorized the release of a foreign national pursuant to reasonable, individually tailored conditions.

2. The Immigration Judge Decision Regarding Risk of Flight is
Contrary to Numerous BIA Decisions.

The Immigration Judge's decision is in stark contrast to years of BIA unpublished decisions which have held that a low probability of relief or the lack of application for relief can not be the basis for finding that an immigrant is a flight risk. The Immigration Judge failed to consider that Petitioner has steady employment. He has been working at the job for the same

amount of time he has been in this country, three years. *See* R-T-M-, AXXX XXX 273 (BIA May 17, 2019) (reverses finding that respondent was a flight risk based solely on prospect of receiving relief from removal); (Mann, Liebman, Morris); H-G-W-, AXXX XXX 614 (BIA Dec. 19, 2019) (reverses finding that respondent was a flight risk given that he had a fixed address, was employed, possessed property and community ties, turned himself into immigration authorities, intended to apply for asylum, and that his similarly situated wife received a bond of \$10,000) (Couch, Mann, Kelly); Appeal ID 5477987 (BIA July 8, 2024) (failure to seek immigration relief during lengthy presence in United States not valid basis for flight risk determination) (Lopez, Goodwin, O'Connor); Appeal ID 5477987 (BIA July 8, 2024) (failure to seek immigration relief during lengthy presence in United States not valid basis for flight risk determination) (Lopez, Goodwin, O'Connor); G-C-S-, AXXX XXX 032 (BIA April 30, 2019) (reverses finding that respondent was a flight risk where IJ found that respondent did not establish prima facie eligibility for any form of relief but administrative records showed that he had a pending application for cancellation of removal) (Wendtland, Cole, Greer). R-C-K-C-, AXXX XXX 113 (BIA March 11, 2019) (reverses finding that respondent would be a flight risk in light of affidavit from cousin stating that he would provide housing and ensure respondent appeared in court) (Greer, Donovan, Cole (dissenting)). Exhibit E.

Here, the Immigration Judge's conclusion stands in stark contrast to years of BIA decisions which have found that immigrants in an identical position are not a flight risk. Moreover, the District Court of New Jersey had an opportunity to review an Immigration Judges bond decision in *Guerrero-Sanchez*, 905 F.3d at 224. Mr. Guerrero-Sanchez was issued an expedited order of removal after attempting to enter the USA with a fraudulent document. Thereafter, he re-entered the USA and was convicted of one count of conspiracy to distribute

more than fifty grams of methamphetamine, in violation of [21 U.S.C. §§ 846](#) and [841\(a\)\(1\)](#), and he was sentenced to forty-two months of imprisonment. After his sentence, he was placed in reinstated removal proceedings and sought CAT relief. The IJ denied his claim, the BIA denied his claim and the Third Circuit Court of Appeals vacated the BIA's order and remanded for further consideration. Mr. Guerrero-Sanchez filed a petition for writ of habeas corpus arguing that he was eligible for a bond and the District Court Judge ordered that a bond hearing be held. The Immigration Judge denied bond. Exhibit F.

The District Court Judge vacated the Immigration Judge's decision holding: "The great weight of record evidence also indicates that Petitioner is not a present danger to the community and not a flight risk." "Finally, there are conditions of release that will further assure Petitioner's appearance at future immigration proceedings. Such conditions include contacting immigration officials before a change of residence or telephone number, having Petitioner's wife act as a custodian who will agree to supervise Petitioner and ensure his appearance at immigration proceedings, and restricting Petitioner's travel radius." The District Court held, "Petitioner is neither a current flight risk nor a danger to the community. Therefore, his continued detention is *not* necessary to fulfill the purposes of the detention statute. Accordingly, an order releasing Petitioner from detention and setting forth appropriate conditions of release will follow."

Guerrero Sanchez v. Sabol, 2016 U.S. Dist. LEXIS 177914 (M.D. Pa 2016). Exhibit F

Here, the Petitioner's claim for asylum has yet to be adjudicated. In *Guerrero-Sanchez* his Withholding of removal claim, which is similar to asylum, was denied by the Immigration Judge and the BIA. Moreover, Guerrero-Sanchez had already been deported and re-entered and was convicted of a serious drug offense. Here, the Petitioner is a far greater candidate for release

than Mr. Guerrero-Sanchez. The Petitioner was never convicted of a crime and he has never been deported before. His asylum claim has not been adjudicated.

3. The Immigration Judge Did not Apply the Clear and Convincing Burden

Since the Immigration Judge based the risk of flight upon the fact that the Petitioner has not demonstrated that he has any potential immigration relief available to him, does not appear that he has any immediate relatives with legal status, and the evidence is insufficient that he is planning to file asylum. DHS presented no evidence, the burden of proof by clear and convincing could not have been satisfied as a matter of law. At the outset, "clear and convincing" is a demanding standard.. *See Enoch v. Sessions*, 2017 U.S. Dist. LEXIS 73676, at *9 (W.D.N.Y.2017)(clear and convincing that requires the government to prove that a factual contention is 'highly probable.'). The Court's holding in *German Santos* that the burden must be on the government in a habeas court-ordered bond hearing isn't based solely on the fact of prolonged detention, but on the fact that the noncitizen has suffered a due process violation and the government seeks to take away a fundamental interest, the liberty, of the noncitizen. *See German Santos v. Warden Pike Cnty. Corr. Facility* 965 F.3d 203, 214 (3d Cir. 2020) ("[W]e see no basis for abandoning the settled rule that when a party stands to lose his liberty, even temporarily, we hold the Government to a higher burden of proof."). Nor is the application of the clear and convincing standard established by the talismanic invocation of that standard as Judge Fisher did in his conclusory bond order. *See. e.g. Hechavarria*, 358 F.Supp.3d at 240 ("mere utterance" of the clear and convincing standard is insufficient when the record demonstrates otherwise); *Enoch v. Sessions*, 2017 U.S. Dist. LEXIS 73676 (W.D.N.Y. 2017)(same). *See also* M-T-G-, AXXX XXX 648 (BIA July 31, 2017) (IJ erred under *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), by placing burden of proof on respondent rather than DHS) (Grant).

Exhibit E.

D. The Court Should Conduct Its Own Bond Hearing

Given the government's failure to provide Petitioner with a bond hearing in compliance with applicable legal and constitutional requirements, this Court should conduct its own bond hearing as several courts have done under similar circumstances. *See Hechavarria, supra; Guerrero-Sanchez, supra, Luciano-Jimenez, supra; Wilkins, supra; German Santos, supra; Leslie, supra.* Alternatively, Petitioner would urge that the Court release him outright. *See, e.g., Madrane v. Hogan*, 520 F. Supp. 2d 654 (M.D. Pa. 2007); *Victor v. Mukasey*, 2008 U.S. Dist. LEXIS 96187 (MD. Pa. 2008); *Nunez-Pimentel v. U.S. Dep't of Homeland Security Immigration Customs Enforcement*, 2008 U.S. Dist, LEXIS 49926 (M.D. Pa. 2008).

CONCLUSION

For all the above reasons, the Court should grant the motion to enforce the November 12, 2025 order and conduct a bond hearing for the Petitioner or Order his immediate release.

Dated: December 9, 2025
New York, NY

Respectfully submitted,
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