

ERIC GRANT  
United States Attorney  
BRITTANY M. GUNTER  
Assistant United States Attorney  
2500 Tulare Street, Suite 4401  
Fresno, CA 93721  
Telephone: (559) 497-4000  
Facsimile: (559) 497-4099

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANIEL JAMES CUMMINS,

Petitioner,

v.

MOISES BECERRA, ET AL.,

Respondents.

CASE NO. 1:25-CV-01853-DC-AC

RESPONDENTS' MOTION TO DISMISS THE  
PETITION FOR WRIT OF HABEAS CORPUS;  
OPPOSITION TO MOTION TO ENFORCE AND  
MODIFY HABEAS RELIEF AND FOR  
IMMEDIATE RELEASE

**NOTICE OF MOTION**

Please take notice that Respondents move this Court for an order dismissing this action. Respondents' motion is based on this notice, the points and authorities in support of this motion, and other good cause. Respondents notice this motion for a hearing on February 20, 2026, at 1:30 p.m. Respondents confirmed Petitioner's counsel is available that date if the Court chooses to hold a hearing. Respondents' position is that this motion can be decided without a hearing and on the papers.

**STATEMENT OF RELIEF**

Respondents move for an order dismissing the Petition for Writ of Habeas Corpus and Motion to Enforce and Modify Habeas Relief and for Immediate Release. ECF 1, 19. In the alternative, the Petition and Motion should be denied.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. BACKGROUND**

On December 23, 2025, this Court considered and denied Petitioner's request for immediate release. ECF 12. The Court, however, ordered Respondents to provide Petitioner with a "constitutionally compliant bond hearing by no later than fourteen (14) days from the entry date" of the Court's Order. ECF 12, at 10. Petitioner subsequently filed a motion to shorten the time period for the bond hearing to be conducted, which the Court denied on December 31, 2025. ECF 17. The Court noted that there was "no basis to shorten the time for a bond hearing any further." ECF 17.

In compliance with this Court's order, Petitioner received a bond hearing before an IJ on January 2, 2026. ECF 21, Notice of Lodging of CD Containing Audio Recoding from Bond Hearing, Declaration of Jessica Ann Harold. The bond hearing was held within the fourteen days from December 23, 2025, as required by this Court. *Id.*; ECF 12, at 10.

Petitioner's bond hearing comported with this Court's Order. The bond hearing was audio recorded. *See* ECF 21. Petitioner appeared via video and was represented by counsel. ECF 21, at 1:23-1:48. The IJ confirmed on the record that Petitioner could understand her and that he wished for his counsel to represent him. *Id.* at 2:08-2:47.

At the outset of the hearing, the IJ stated that she was applying the burden of proof contemplated by this Court's order: "We're here today for a bond hearing at which the Department bears the burden to prove by clear and convincing evidence that Respondent is a danger and/or a flight risk." *Id.*, at 2:50-3:00. Petitioner's counsel then waived the reading and advisal of Petitioner's rights and responsibilities. *Id.*, at 3:00-3:12.

The IJ then methodically identified all the documentary evidence presented to her in advance of the hearing. *Id.*, at 3:12-4:03. The evidence included the following: 1) this Court's temporary restraining order ("TRO"), 2) an I-863, Notice of Referral to Immigration Judge, indicating that Petitioner was a Visa Waiver Program violator, 3) an I-213, Record of Deportable/Inadmissible Alien, 4) Petitioner's FBI rap sheet, and 5) supporting documents including a copy of Petitioner's I-589, Application for Asylum and for Withholding of Removal, Petitioner's declaration regarding his I-589, as well as documents related to Petitioner's arrest for attempted murder, which was dismissed. *Id.*, at 3:12-

1 3:53. The IJ noted she received a legal brief in support of bond, presumably filed by Petitioner's  
2 counsel, and that she was considering it. *Id.* at 3:54-4:03.

3 Petitioner's counsel objected only to the FBI rap sheet, noting that it was not supported by  
4 certified court records. *Id.*, at 4:04-5:10. Before ruling on Petitioner's counsel's objection, the IJ noted  
5 how she would be considering the evidence: "Let me just preface this by saying this. So, the burden and  
6 whether the Department has met its burden is different from admissibility of this document. So, I hear  
7 you saying that like, 'Oh, there's no certified court records.' That doesn't mean this document is  
8 inadmissible. It might mean that I give it different weight. It might mean that the Department hasn't  
9 met its burden, but it doesn't go really to the admissibility of this document. I also understand that a lot  
10 of the charges have been dismissed against [Petitioner]. But again, that doesn't go to admissibility of this  
11 document unless you want to flesh out the argument for me." *Id.* at 5:10-5:53. Petitioner's counsel  
12 then noted that they were not disputing the accuracy of the I-213, which she said appeared accurate as to  
13 the attempted murder charges. *Id.*, at 6:04-6:12. However, Petitioner's counsel did dispute a certain  
14 driving under the influence ("DUI") charge appearing on the FBI rap sheet. *Id.*, at 6:12-6:20. After  
15 some further discussion, it became clear that Petitioner had one conviction from July 2021 for a DUI  
16 committed in September 2020. *Id.*, at 6:21-11:40. Petitioner's counsel indicated there were no other  
17 objections to the exhibits, so the IJ then admitted all of the exhibits. *Id.*, at 11:54-12:00. The IJ stated  
18 she would determine how much weight to give the exhibits. *Id.* at 12:00-12:08.

19 Before then hearing and considering arguments from counsel, the IJ reiterated again the burden  
20 applicable at the hearing: "I gave the relevant burden in this proceeding a moment ago. Namely, it's the  
21 Department's burden." *Id.*, at 12:09-12:18. Argument began and ended with Petitioner's counsel.  
22 Petitioner's counsel spoke extensively on Petitioner's behalf, highlighting 1) that the attempted murder  
23 charges against Petitioner were dismissed because the victim of the crime could not identify Petitioner in  
24 a line-up, 2) the defendant's only criminal conviction was for DUI but that there were no court records  
25 or fingerprints, 3) Petitioner's illness that is specific to California and requires treatment from a clinic in  
26 California, and 4) Petitioner's relationship with his fiancée, whom he has lived with for three years in  
27 San Francisco. *Id.*, at 12:40-14:15 and 22:53-23:30.

28 On the other hand, counsel for DHS noted that Petitioner entered the United States

1 approximately 8 years ago and had at least four encounters with law enforcement during that time,  
2 including for assault with a deadly weapon, first degree shooting vehicular, and false identification to  
3 officers, which were later dismissed. *Id.*, at 14:16-18:40. Counsel for DHS noted Petitioner's DUI  
4 conviction and referenced that there was a warrant for Petitioner discovered during his arrest for  
5 attempted murder. *Id.*, at 14:50-15:30 and 17:28-17:55. DHS counsel argued that Petitioner's arrests  
6 for serious, criminal offenses were evidence of danger. *Id.* at 19:22-19:45.

7 As to flight, counsel for DHS argued that, despite Petitioner having been in the United States for  
8 approximately eight years, Petitioner waited to file his I-589 application until September 2025. *Id.*, at  
9 19:45-20:46. She noted that Petitioner was barred from asylum because of the one-year filing deadline.  
10 *Id.*, at 20:15-20:23. Counsel for DHS also argued that there was no evidence of Petitioner's work  
11 activities or ties to an address during his eight years in the United States other than a declaration from  
12 Petitioner's fiancée about the last three years. *Id.*, at 20:47-21:20. DHS counsel noted that while there  
13 were letters from Petitioner's friends, there were no utility bills, tax filings, or other government  
14 documents tying Petitioner to a particular address or workplace during the past eight years. *Id.* 21:20-  
15 22:25. In closing, DHS counsel argued Petitioner was a flight risk because there was a lack of evidence  
16 as to his ties to the United States and his immigration relief was "speculative and limited." *Id.*, at 22:25-  
17 22:45.

18 As part of the hearing, Petitioner's counsel noted that Petitioner's criminal defense attorney that  
19 handled his attempted murder case was present at the hearing. *Id.*, at 13:16. The IJ exercised her  
20 discretion in declining to hear witness testimony, pursuant to 9.3(e)(6) of the immigration court practice  
21 manual. *Id.*, at 23:33-23:44.

22 At the conclusion of the hearing, the IJ orally pronounced that, after considering the evidence  
23 and arguments of counsel, she was denying bond based on flight and danger. *Id.*, at 23:45-23:52. She  
24 said she found that the Department met its burden of showing by clear and convincing evidence that  
25 Petitioner was both a danger and a flight risk "so significant that no amount of release conditions are  
26 appropriate." *Id.*, at 23:52-24:03. Petitioner's counsel then confirmed that Petitioner wanted to preserve  
27 his right to appeal. *Id.*, at 24:03-24:10. The IJ advised Petitioner that he had until February 2, 2026, to  
28 file an appeal. *Id.*, at 24:10-24:15. Petitioner's counsel waived full advisement of appellate rights. *Id.*,

1 at 24:15-24:20. The IJ then spoke directly with Petitioner and stated, “I am denying your bond. I am  
 2 concluding you are both a danger and a significant flight risk.” *Id.*, at 24:20-24:30.

## 3 **II. ARGUMENT**

### 4 **A. There is No Remaining Case or Controversy.**

5 Because Petitioner has received the relief he requested in his habeas petition or it has otherwise  
 6 been addressed by this Court, this matter is now moot. There is no longer any live case or controversy  
 7 for this Court to resolve, and the Court must dismiss the petition. *Flores-Torres v. Mukasey*, 548 F.3d  
 8 708, 710 n.3 (9th Cir. 2008) (dismissing as moot a challenge to immigration detention without a hearing  
 9 because the alien had subsequently received a hearing).

10 This Court does not have subject matter jurisdiction to consider a habeas claim that is moot.  
 11 *McCullough v. Graber*, 726 F.3d 1057, 1060 (9th Cir. 2013). Here, this Court’s prior decision (ECF 12)  
 12 and Petitioner’s bond hearing that conformed with the Court’s order renders moot all of the claims  
 13 raised in his habeas petition. The Court should therefore dismiss the petition in its entirety as there is no  
 14 longer a live case or controversy as it relates to the habeas petition.

### 15 **B. Petitioner has Not Exhausted his Administrative Remedies.**

16 The Court should dismiss Petitioner’s Motion to Enforce and Modify Habeas Relief and for  
 17 Immediate Release because it is premature. Petitioner can pursue—as he indicated at his bond hearing  
 18 that he was preserving his right to pursue—an administrative appeal of the IJ’s decision to deny bond.  
 19 *Id.*, at 24:03-24:10; *see also Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011); *Diaz Reyes v.*  
 20 *Mayorkas*, 854 Fed. App’x 190, 191 (9th Cir. 2021); *Doe v. Becerra*, 2025 U.S. Dist. LEXIS 81332  
 21 (E.D. Cal. Apr. 29, 2025). “[Courts] require, as a prudential matter, that habeas petitioners exhaust  
 22 available judicial and administrative remedies before seeking relief under § 2241.” *Castro-Cortez v.*  
 23 *INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), abrogated on other grounds, *Fernandez-Vargas v. Gonzalez*,  
 24 548 U.S. 30 (2006). In *Leonardo*, with facts similar to those presented here, the Ninth Circuit stated the  
 25 following:

26 Here, Leonardo pursued habeas review of the IJ’s adverse bond  
 27 determination before appealing to the BIA. This short cut was improper.  
 28 Leonardo should have exhausted administrative remedies by appealing to  
 the BIA before asking the federal district court to review the IJ’s decision.

*See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (a petitioner "must exhaust administrative remedies before raising . . . constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal").

*Leonardo*, 646 F.3d at 1160. Accordingly, because Petitioner has not exhausted his available administrative remedies, this Court should dismiss his Motion.

**C. The Bond Hearing Petitioner Received was Adequate.**

Respondents maintain their position that no bond hearing was required under the statute or Constitution for someone in Petitioner's situation. *See* ECF 10. Respondents do not concede that a bond hearing was constitutionally required under the circumstances of this case. *Id.*

But, Respondents complied with the Court's order, and Petitioner was given a bond hearing before an IJ. That bond hearing complied with the Court's order and complied with any constitutional requirements.

The fact that the IJ ultimately reached a bond decision other than the one Petitioner wanted does not rise to the level of a constitutional violation. This Court lacks the authority to reassess the evidence presented at the bond hearing and come to a different conclusion, which is the thrust of what Petitioner is now seeking, albeit cloaked in constitutional garb. "[D]iscretionary decisions granting or denying bond are not subject to judicial review," *Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008), and "a district court may not second guess the IJ's weighing of the evidence," *Quan v. Barr*, No. 20-CV-08118-LB, 2021 U.S. Dist. LEXIS 17705 (N.D. Cal. Jan. 29, 2021).

Petitioner received a bond hearing that gave him a meaningful opportunity to be heard, explicitly applied the burden of proof ordered by this Court, and resulted in a decision that was fair. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation marks omitted). Due process "is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 334 (citation omitted).

In assessing whether a given procedural framework affords due process, courts typically assess three factors: 1) the private interest that will be affected by the official action, 2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any of additional or

1 substitute procedural safeguards, and 3) the government’s interest, including the function involved and  
2 the fiscal and administrative burdens that the additional or substitute procedural requirement would  
3 entail. In applying *Mathews* in the immigration context, this Court must “weigh heavily” the fact “that  
4 control over matters of immigration is a sovereign prerogative, largely within the control of the  
5 executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). This Court must also  
6 consider that Congress “emphatic[ally]” intended the government’s discretionary decisions regarding  
7 detention to be “presumptively correct and unassailable except for abuse.” *Carlson v. Landon*, 342 U.S.  
8 524, 540 (1952).

9 With respect to the first *Mathews* factor, while it is true as a general matter that the freedom from  
10 physical restraint “lies at the heart of the liberty that [the Due Process] Clause protects,” *Zadvydas v.*  
11 *Davis*, 533 U.S. 678, 690 (2001) (punctuation omitted), the Supreme Court has clarified that “[i]n the  
12 exercise of its broad power over naturalization and immigration, Congress regularly makes rules that  
13 would be unacceptable if applied to citizens.” *Demore v. Kim*, 538 U.S. 510, 522 (2003). Accordingly,  
14 while “the Fifth Amendment entitles aliens to due process of law in deportation proceedings . . .  
15 detention during deportation proceedings is a constitutionally valid aspect of the deportation process.”  
16 *Id.* at 523. Any assessment of the private interests at stake must therefore account for the fact that the  
17 Supreme Court has never held that noncitizens have a constitutional right to be released from custody  
18 during the pendency of removal proceedings, and in fact has held the opposite. *See id.* at 530; *Carlson*,  
19 342 U.S. at 538. Further, consideration of the private interest also must account for the fact that a  
20 noncitizen without lawful status in the United States is not simply asserting a right to be at liberty, but  
21 rather a right to be at liberty in the United States. *Cf. Reno v. Flores*, 507 U.S. 292, 306 (1993)  
22 (“Congress eliminated any presumption of release pending deportation, committing that determination to  
23 the discretion of the Attorney General.”).

24 With respect to the second *Mathews* factor, the framework surrounding the detention of  
25 Petitioner provides safeguards to protect against arbitrary deprivation of liberty while also protecting the  
26 government’s interests in ensuring that he does not abscond or commit crimes while removal  
27 proceedings are ongoing. He has received a recorded hearing, represented by counsel, where he had the  
28 opportunity to present or rebut evidence on flight risk or dangerousness. The IJ issued its ruling after

1 considering the evidence and arguments of counsel. Petitioner can now avail himself of BIA review of  
 2 the IJ's detention order. The bond hearing process Petitioner received is thus flexible and permits an  
 3 individual to present or rebut any evidence that may bear on his dangerousness or flight risk. *Matter of*  
 4 *Guerra*, 24 I & N. Dec. at 40-41. Accordingly, the safeguards governing his detention are substantial  
 5 and more than adequately protect against the risk of "erroneous deprivation" of liberty.

6 As to the third *Mathews* factor, the process Petitioner received reflects Congress' intent to afford  
 7 "broad discretion" to the government in determining which individuals should remain detained for  
 8 removal proceedings, *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019), and to increase the probability that  
 9 individuals who are ordered removed are in fact removed. H.R. Rep. 104-469(I) at 123; *Zadvydas*, 533  
 10 U.S. at 699-700 (assessing the reasonableness of immigration detention "primarily in terms of the  
 11 statute's basic purpose"). Congress enacted the amendments to the Immigration and Nationality Act  
 12 ("INA") based on its concern that "[a] chief reason why many deportable aliens are not removed from  
 13 the United States is the inability of the INS to detain such aliens through the course of their deportation  
 14 proceedings." H.R. Rep. 104-469(I), at 123; *see also Demore*, 538 U.S. at 519. "The government has  
 15 an understandable interest in detaining such persons to ensure attendance at immigration proceedings,  
 16 improve public safety, and promote compliance with the immigration laws." *Frailhat v. ICE*, 16 F.4th  
 17 613, 647 (9th Cir. 2021). The government's interest in maintaining the existing procedures for bond  
 18 hearings to ensure that removal orders can be promptly executed is thus legitimate and significant. And  
 19 while Petitioner may disagree with Congress' judgment regarding the importance of detention as a  
 20 means of ensuring removal, "when the Government deals with deportable aliens, the Due Process Clause  
 21 does not require it to employ the least burdensome means to accomplish its goal." *Demore*, 538 U.S. at  
 22 528. Although Petitioner is dissatisfied with the outcome of his bond determination, the IJ properly  
 23 weighed the evidence and concluded he was a danger and a flight risk. This Court cannot disturb this  
 24 discretionary determination. As the Ninth Circuit has held, "discretionary decisions granting or denying  
 25 bond are not subject to judicial review." *Prieto-Romero*, 534 F.3d at 1058; *see also* 8 U.S.C. § 1226(e).

26 As numerous district courts have held, "a district court may not second guess the IJ's weighing  
 27 of the evidence." *Quan v. Barr*, No. 20-CV-08118-LB, 2021 U.S. Dist. LEXIS 17705, at \*4 (N.D. Cal.  
 28 Jan. 29, 2021); *accord, e.g. Slim v. Nielson*, No. 18-cv-02816-DMR, 2018 U.S. Dist. LEXIS 147603, at

1 \*3 (N.D. Cal. Aug. 29, 2018) (same); *Calmo v. Sessions*, No. C 17-07124 WHA, 2018 U.S. Dist. LEXIS  
 2 98717, at \*4 (N.D. Cal. June 12, 2018) (same). A petitioner may not challenge an IJ's discretionary  
 3 decision denying bond "simply by cloaking an abuse of discretion argument in constitutional garb."  
 4 *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001). Rather, when district courts "review[] the  
 5 sufficiency of the evidence within the confines of § 1226(e), . . . the question is not whether this Court  
 6 believes that the proof establishes . . . that [the petitioner] is a danger to the community or flight risk.  
 7 Rather the Court must decide whether the IJ relief upon proof that—as a matter of law—could not  
 8 establish that conclusion." *Kharis v. Sessions*, No. 18-CV-04800-JST, 2018 U.S. Dist. LEXIS 190082,  
 9 at \*5 (N.D. Cal. Nov. 6, 2018) (citations omitted).

10 As the Ninth Circuit has recognized, "[t]he Federal Rules of Evidence do not apply strictly in  
 11 immigration removal proceedings . . . [And] bond hearings are particularly informal in nature." *Singh*,  
 12 638 F.3d at 1209-10. "A district judge may not second guess the immigration judge's weighing of the  
 13 evidence" and "differences in interpretation of the facts remained well within the province of the  
 14 immigration judge." *Calmo*, 2018 U.S. Dist. LEXIS 98717, at \*4-5. IJs are presumed to have reviewed  
 15 all evidence that was before them. *Larita Martinez v. INS*, 220 F.3d 1092, 1095-96 (9th Cir. 2000) (BIA  
 16 is presumed to have reviewed all evidence, including supplemental evidence, before it); *Kumar v.*  
 17 *Holder*, 388 F. App'x 665, 666 (9th Cir. 2010) (same regarding IJ) (citing *Larita-Martinez*, 220 F.3d at  
 18 1096). The Ninth Circuit has rejected "any implication that . . . [the IJ] must expressly parse or refute on  
 19 the record each individual argument or piece of evidence offered by the petitioner." *Najmabadi v.*  
 20 *Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (cleaned up).

21 Finally, even if the habeas petition is granted, the appropriate relief is a new bond hearing, not  
 22 release from detention. See e.g., *Demore*, 538 U.S. at 532 (Kennedy, J., concurring). "[C]ompelled  
 23 release of detainees is surely a remedy of last resort." *Fraihat*, 16 F.4th at 642. Circuit courts that  
 24 evaluated mandatory pre-order detention (pre-*Jennings*) determined that a bond hearing before the IJ is  
 25 an appropriate remedy for unreasonably prolonged detention. See, e.g., *Rodriguez v. Robbins*, 804 F.3d  
 26 1060, 1084 (9th Cir. 2015), *rev'd Jennings*, 138 S. Ct. 830; *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1219  
 27 (11th Cir. 2016); accord, e.g., *Mansoor v. Figueroa*, No. 3:17-cv-01695-GPC (NLS), 2018 U.S. Dist.  
 28 LEXIS 23695, at \*4 (S.D. Cal. Feb. 13, 2018) (IJs are well suited to assess eligibility for release, while a

1 district court “lacks the factual support to make a determination about Petitioner’s risk of flight or  
2 dangerousness to the community”). To order otherwise would unnecessarily contravene the statute’s  
3 implementing regulations, which place review of custody determinations in the hands of the IJ and the  
4 BIA. Because Petitioner has already received a constitutionally compliant bond hearing, no further  
5 action is needed in this case. However, if the Court rules otherwise, the appropriate relief here is not  
6 release, but another bond hearing that provides Petitioner “an opportunity to contest the necessity of his  
7 detention before a neutral decisionmaker and an opportunity to appeal that determination to the BIA.”  
8 *Prieto Romero*, 534 F.3d at 1065-66.

9 **III. CONCLUSION**

10 For the foregoing reasons, this Court should dismiss the habeas petition in its entirety as moot.  
11 Alternatively, this Court should dismiss the Motion to Enforce, as Petitioner has not exhausted  
12 administrative remedies. Alternatively, because Petitioner has been granted a constitutionally compliant  
13 bond hearing, the Court should deny the petition and the Motion to Enforce on the merits.

14  
15  
16 Dated: January 9, 2026

ERIC GRANT  
United States Attorney

17  
18 By: /s/ BRITTANY M. GUNTER  
BRITTANY M. GUNTER  
Assistant United States Attorney  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28