

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

DENIS YABRENCO ESPINOZA
HERNANDEZ

Petitioner,

v.

Warden, Stewart Detention Center, *et al.*,

Respondents.

Civil Action No.: 7:25-CV-201-WLS-AGH

PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO ENFORCE¹

¹ Petitioner notes that Respondents did not timely file a Response to his Motion to Enforce Judgment filed on February 12, 2026. They also failed to comply with the Court's Order in ECF No. 13 limiting the brief to 10 pages. Instead, they filed a consolidated brief in ECF No. 14 that contains a Response and Brief. However, since Respondents failed to respond to the Motion to Enforce on a timely manner, their late-filed Response should not be accepted this late.

Petitioner submits this supplemental brief in response to the Court’s March 3, 2026 Order (ECF No. 13). The question before the Court is not whether it may reweigh the Immigration Judge’s (IJ) discretionary bond factors, but whether Respondents complied with this Court’s conditional writ by providing a bond hearing that comported with due process. The record, together with the rapidly developing case law from multiple districts and clear evidence of systemic bias in § 1226(a) bond proceedings, shows that Respondents did not.

I. THE COURT HAS JURISDICTION TO ENFORCE ITS HABEAS ORDER AND TO REMEDY A CONSTITUTIONALLY DEFICIENT BOND HEARING.

Federal courts can review the constitutionality and adequacy of bond hearings to ensure due process. *Castellar v. McAleenan*, 388 F.Supp.3d 1218 (S.D. Cal. 2020). Challenges to the *legality* of detention, including due process violations in bond hearings and the enforcement of habeas relief, fall squarely within this Court’s jurisdiction, irrespective of statutory limitations on discretionary review or prudential exhaustion doctrines. Section 1226(e) does not bar enforcement of a conditional habeas writ based on constitutional defects in the bond process. *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 960 (N.D. Cal. 2019) (§ 1226(e) does not bar courts from concluding that “[t]he evidence before the IJ failed, as a matter of law, to prove flight risk or danger.”) quoting *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008). This Court’s inquiry into the constitutional adequacy of ordered hearings does not impermissibly traverse 8 U.S.C. § 1226(e) or amount to review of “discretionary” bond decisions. *See Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (§ 1226(e) “does not preclude challenges to the statutory framework that permits the alien’s detention without bail.”) (cleaned up).

Respondents’ contention in ECF 14 that this Motion seeks to “review, and, if appropriate, set aside the IJ’s decision” mischaracterizes both the relief Petitioner requests and the scope of this Court’s authority. The Motion does not ask the Court to second-guess how the IJ weighed

the *Guerra* factors in an ordinary bond appeal; it asks the Court to enforce its own conditional writ by determining whether the ordered bond hearing complied with the Constitution and with the specific conditions the Court imposed. That distinction—between impermissible review of a discretionary bond outcome and permissible enforcement of a habeas order and due process requirements—is precisely the one multiple courts have drawn when rejecting the same § 1226(e) and § 1252(a)(2)(B) arguments Respondents advance here.

In *Mathon v. Searls*, 623 F. Supp. 3d 203 (W.D.N.Y. 2022) (*Mathon*), the court enforced a conditional writ after an IJ treated the court-ordered hearing as a “typical” § 1226(a) redetermination under *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (*Guerra*); invoked “broad discretion” over which factors to weigh, failed to apply the clear-and-convincing standard the court had imposed, and refused to seriously consider alternatives to detention. The court held that § 1226(e) was “no impediment” because it was not “reviewing an IJ’s ‘discretionary judgment’ under § 1226” but determining whether the government had complied with the conditions of the bond order and provided the due process required². Likewise, in *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227 (W.D.N.Y. 2019) (*Hechavarria*), the court rejected the government’s § 1226(e) argument and enforced a prior habeas order where the IJ failed to apply the court-ordered clear-and-convincing standard and to consider less restrictive alternatives, emphasizing that § 1226(e) “applies only to ‘discretionary judgment[s] regarding the application of § 1226’” and does

² “§ 1226(e) does not preclude the Court’s jurisdiction where a noncitizen raises a constitutional challenge to the bond hearing she received.” The court faced a motion to enforce a conditional writ after an IJ conducted a bond hearing that copied the “typical” § 1226(a) framework, placed the burden on the noncitizen, and refused to seriously consider alternatives to detention. The government argued that § 1226(e) barred the court from reviewing the IJ’s bond decision, but the court held that § 1226(e) “is no impediment” where the district court is not “reviewing an IJ’s ‘discretionary judgment’ under § 1226” but instead “determin[ing] whether all of the conditions contained in the bond order were followed—that is, whether [the petitioner] received the due process to which he was entitled.” The court concluded that the IJ had “disregarded the Court’s instructions” and that habeas enforcement jurisdiction squarely permitted it to grant further relief, including release.

not bar review of whether “the government complied with the conditions contained in the Court’s bond order” and provided a meaningful hearing due process required.

Aparicio-Larin v. Barr, No. 6:19-cv-06293-MAT, 2019 WL 3252915 (W.D.N.Y. July 19, 2019), similarly held that while § 1252(a)(2)(B)(ii) and § 1226(e) bar review of “the substance of an IJ’s discretionary bond determination,” they “do[] not bar ... constitutional challenges to the immigration bail system” and required a new § 1226(a) hearing at which the government bore the burden of proof by clear and convincing evidence.³

Following that same process/merits distinction, a growing line of decisions holds that courts retain jurisdiction, notwithstanding § 1226(e) and § 1252(a)(2)(B), to review whether a bond hearing comported with due process or a prior habeas order. *See, e.g., Alvarado Lopez v. Dillman*, No. 1:25-CV-2456, 2026 WL 688958, at *4–5 (E.D. Va. Mar. 11, 2026)⁴; *Lozano Rosales v. Simon*, No. 1:26-cv-86 (LMB/WEF) (E.D. Va. Mar. 11, 2026); *Picado v. Hyde*, No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *4 (D.R.I. Feb. 9, 2026)⁵; *Soto-Medina v. Lynch*, No. 1:25-CV-1704, 2026

³ The court recognized that 8 U.S.C. § 1252(a)(2)(B)(ii) and § 1226(e) strip jurisdiction over “the substance of an IJ’s discretionary bond determination,” which must be appealed to the BIA, but emphasized that “[w]hat § 1226(e) does not bar, however, are constitutional challenges to the immigration bail system.” Applying that rule, the court entertained a due process challenge to the burden allocation and standard of proof at § 1226(a) bond hearings and held that, “as a matter of due process,” the petitioner was entitled to a new hearing at which the government bore the burden of proof by clear and convincing evidence. Taken together, these enforcement decisions confirm that § 1226(e) and § 1252(a)(2)(B) do not insulate the government from judicial scrutiny when a district court is enforcing a habeas judgment and asking whether the ordered bond hearing actually provided the process the Constitution and the court’s own order require. In that posture, the court “is neither reviewing an IJ’s ‘discretionary judgment’ under § 1226 nor ‘set[ting] aside any action or decision by the Attorney General’” about bond; it is ensuring that respondents complied with the conditional writ and afforded the “meaningful, neutral, and individualized adjudication” that due process demands. That is exactly what Petitioner seeks here.

⁴ (finding the prior bond process constitutionally deficient and using its habeas enforcement power to order a new hearing). The court explained that *Alvarado* “does not seek review or reweighing of the [IJ’s] denial of bond.” [] Rather, her challenge is constitutional in nature because she argues that the [IJ] failed to “provid[e] the meaningful, neutral, and individualized adjudication required under 8 U.S.C. § 1226(a) and the Due Process Clause of the Fifth Amendment. *Id.* at *5. Similarly, the court then also held that § 1252(a)(2)(B)(ii) did not limit its jurisdiction to review whether the IJ’s decision comports with due process, noting that “federal immigration officials do not have discretion as to whether to comply with the Fifth Amendment in denying a noncitizen’s request for release on bond.”

⁵ Court found jurisdiction where “Mr. Picado is not challenging the IJ’s discretionary judgment. Rather, his challenge is constitutional in nature because he argues that the IJ failed to comport with due process requirements when she denied him release on bond” *Id.*, citing *Garcia v. Hyde*, No. 25-cv-585-JJM-PAS, 2025 WL 3466312, at *5 (D.R.I. Dec. 3, 2025) (“this is ‘precisely’ the type of claim that belongs in federal court.”).

WL 161002, at *2 (W.D. Mich. Jan. 21, 2026)⁶; *Akhemedov v. Pittman*, No. CV 25-13734, 2026 WL 323404, at *3 (D.N.J. Feb. 6, 2026) (Court can review whether the bond hearing was fundamentally unfair); *Kudzai Shonhai v. Lowe*, No. 3:24-CV-229, 2026 WL 538865, at *10 (M.D. Pa. Feb. 26, 2026)) (“Section 1226(e) does not deprive federal courts of jurisdiction to address due process challenges to bond hearings”); *Coffie-Joseph v. Oddo*, No. 24-cv-114, 2025 WL 2596940, at *1 (W.D. Pa. Sept. 8, 2025)⁷; *Santos v. Lowe*, No. 18-cv-1553, 2020 WL 4530728, at *2 (M.D. Pa. Aug. 6, 2020) (courts have jurisdiction to consider an immigration detainee’s due process challenge to a bond hearing); *Quinteros v. Warden Pike Cnty. Corr. Facility*, 784 F. App’x 75 (3d Cir. 2019)⁸; *Ghanem v. Warden Essex Cnty. Corr. Facility*, No. 21-1908, 2022 WL 574624, at *2 (3d Cir. Feb. 25, 2022)⁹. All of these cases confirm that a court “is neither reviewing an IJ’s ‘discretionary judgment’ under § 1226 nor ‘set[ting] aside any action or decision by the Attorney General’” when it enforces a conditional writ and asks whether the ordered bond hearing actually provided the “meaningful, neutral, and individualized adjudication” that due process and the court’s own order require. That is exactly what Petitioner seeks here.

All these cases affirm the federal courts’ power to review and remedy constitutional infirmities—whether from constitutionally inadequate bond hearings or otherwise—in immigration detention, including by ordering immediate release or a new bond hearing with the burden on the government. Likewise here, Petitioner is seeking to enforce the Court’s Order by

⁶ Petitioner did not challenge a “discretionary judgment” or “decision” regarding the grant or denial of bond” but instead argued “that the discretionary process itself, in which noncitizens detained under § 1226(a) must prove that they are not dangerous and are not flight risks, is unconstitutional.”

⁷ “This court [] retains “jurisdiction over the [habeas] decision,” [] in the limited sense that it can enforce its writ where the [IJ] conducting the bond hearing ignored the law of the case or [the hearing] was so arbitrary that it could be considered a sham.” (citation omitted);

⁸ § 1226(e) precludes “review [of] discretionary decisionmaking involved in denial of a bond,” not “the legal standard underlying immigration officials’ actions” or the evaluation of “legal and constitutional claims on that basis.”);

⁹ Despite 8 U.S.C. § 1226(e), “we may review whether the bond hearing was fundamentally unfair.”.

ensuring that the ordered § 1226(a)(2) bond hearing actually occurred in a manner consistent with due process. That is classic habeas enforcement, not barred review of discretionary agency action.

II. PRUDENTIAL EXHAUSTION IS NOT REQUIRED IN HABEAS AND WOULD BE FUTILE AS TO THE ENFORCEMENT OF THIS COURT'S ORDER.

Respondents argue that Petitioner was required to appeal the IJ's bond decision to the BIA before seeking enforcement of this Court's conditional writ. That argument improperly conflates prudential exhaustion with a jurisdictional bar and does not apply in this posture. In *Mathon*, the court rejected the same contention in a motion to enforce a prior bond-hearing order, holding that "to the extent [the] motion focuses on whether Respondent complied with the bond order, exhaustion of administrative remedies is not a precondition to this Court's review," and further noting that any putative exhaustion issue was moot once the petitioner had in fact taken a BIA appeal. Enforcement of a conditional writ falls within the district court's own remedial authority and does not depend on prior BIA review (*Mathon*, 213).

Similarly, in *Hechavarria*, DHS argued that petitioner's failure to appeal an IJ's non-compliant bond decision to the BIA barred his motion to enforce a conditional habeas order. The court declined to impose prudential exhaustion, relying on two settled exceptions: futility—because the petitioner sought enforcement of a federal court order that the BIA had no authority to alter—and the BIA's lack of jurisdiction to adjudicate the constitutional challenges to the bond hearing. On that basis, the court proceeded to the merits of the enforcement motion and granted further habeas relief. These cases confirm that, where a petitioner asks only whether Respondents complied with a district court's bond-hearing order and with due process, prudential exhaustion of a BIA appeal is neither a jurisdictional prerequisite nor a sensible requirement. Petitioner is not seeking BIA review of the IJ's discretionary weighing of evidence; he is invoking this Court's habeas enforcement power to ensure that its Order was obeyed and that the ordered hearing afforded the

constitutional protections the BIA itself cannot provide. See also *Alvarado Lopez v. Dillman*, No. 1:25-CV-2456, 2026 WL 688958 at *6 (LMB/LRV) (E.D. Va. Mar. 11, 2026) (“[T]he Court will not require Alvarado to “sit in an ICE detention facility” for months on end while she awaits a BIA decision.); *Picado v. Hyde*, No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *6 (D.R.I. Feb. 9, 2026); *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006) (due process challenges generally do not require exhaustion where the BIA cannot review constitutional claims).¹⁰

III. PETITIONER DID NOT RECEIVE A CONSTITUTIONALLY COMPLIANT, INDIVIDUALIZED BOND HEARING.

Courts have established a clear and uniform set of due process requirements for § 1226(a) bond hearings and have consistently enforced those requirements through habeas relief. Those decisions underscore that bond hearings must be meaningful, individualized, and conducted promptly, with the burden of proof resting on the government to justify detention and with express consideration of less restrictive alternatives to detention and a detainee’s ability to pay a bond.¹¹

A. Due process requires an individualized, good-faith assessment with appropriate allocation of the burden of proof.

Due to the recent evidence of bias in the immigration courts,¹² the emerging, and now widespread, district-court consensus is that, at minimum, a constitutionally adequate § 1226(a)

¹⁰ Evidence of BIA bias in the past year (favoring the government in 99% of cases) (*see* ECF No. 12 - Motion to Enforce, Exhibits 4-13, Brief in Support at 12-20 and Ex. A, the extensive record of EOIR’s non-compliance with federal court bond orders, and the structural bias now infecting § 1226(a) hearings shows that any BIA appeal would be at best duplicative and at worst futile. Numerous district courts have recognized that where the problem is systemic non-compliance or structural bias, “another bare remand” into the same system does not provide meaningful relief. *See, e.g., Chavez Ochoa v. Mason*, No. 2:26-CV-00130, 2026 WL 541144, at *2, n.4 (S.D.W. Va. Feb. 26, 2026) (ordering outright release and finding that a bond hearing before an IJ “would not comport with due process” given pro forma, predetermined denials documented by former ICE and EOIR officials). *See* ECF No. 12-5, Affidavit from former IJ Lawrence O. Burman outlining recent observations of bond hearings and the immigration court system).

¹¹ *See* Petitioner’s Brief in Support at 9-12. A bond hearing that formally cites § 1226(a) and 8 C.F.R. §§ 236.1, 1236.1 but is perfunctory, biased, or predicated on legally irrelevant factors does not satisfy due process or this Court’s writ.

¹² Petitioner submits additional evidence of bias as outlined in articles from Reuters and Politico. Exhibits 1 and 2. Petitioner also submits a declaration of Attorney Alizeh Sheikh documenting further IJ bias and recent attempts to prohibit public observation of bond hearings. Exhibit 3. Shortly after submitting this Declaration in consolidated cases before Judge Land, the IJs have blocked out GAIN’s observers from entering the Webex sessions. Exhibit 4.

bond hearing must: (1) place the burden on the Government to justify continued detention by clear and convincing evidence of danger or flight risk; (2) require the IJ to make individualized, on-the-record findings tied to the statutory purposes of detention (appearance and public safety); (3) require express consideration of less restrictive alternatives to detention and, if monetary bond is set, Petitioner's ability to pay. District courts applying *Mathews v. Eldridge*, 424 U.S. 319 (1976), have repeatedly held that due process in § 1226(a) bond hearings requires the Government to bear the burden of proof and to justify continued detention by at least clear and convincing evidence. See, e.g., *Martinez Escobar v. Baltazar*, No. 26-CV-00296-NYW, 2026 WL 503313, at *5 (D. Colo. Feb. 24, 2026) (Requiring the government to bear the burden of proof at a § 1226(a) bond hearing where petitioner erroneously detained under § 1225); *Garcia Abanil v. Baltazar*, --- F. Supp. 3d ---, 2026 WL 100587, at *8 (D. Colo. Jan. 14, 2026) (same) (collecting cases); *S.E. v. Noem*, No. 1:26-CV-00356-DAD-SCR, 2026 WL 627456, at *2 (E.D. Cal. Mar. 5, 2026)¹³; *Akhmedov v. Pittman*, No. CV 25-13734, 2026 WL 323404, at *3–4 (D.N.J. Feb. 6, 2026)¹⁴; *Y.S.G. v. Andrews*, No. 2:25-cv-1884-SCR, 2025 WL 2979309 at *4–5 (E.D. Cal. Oct. 22, 2025)¹⁵; See also *Mathon*, 623 F. Supp. 3d at 210–12¹⁶.

B. Petitioner's Hearing replicated the very defects identified in the above cases and enforcement decisions.

Here, as detailed in Petitioner's Motion to Enforce and supporting materials, Petitioner's hearing suffered multiple constitutional defects. The IJ completely ignored Petitioner's extensive years-long record of compliance with his OREC, failed to consider undisputed evidence of ties or

¹³ (government PI when the IJ failed to meaningfully apply the clear and convincing standard and committed other legal error integral to the proper implementation of that standard);

¹⁴ Enforcing a prior habeas order after due process deficiencies in the bond redetermination hearing.

¹⁵ (IJ abused discretion in finding noncitizen to be a flight risk and a danger to the community because of passing reference to evidence not meaningfully considered;

¹⁶ The court found non-compliance with its habeas order where the IJ failed to follow the court's requirement that the government bear the burden of proof. The court held that such an approach "disregarded the Court's instructions" and warranted further habeas relief

long compliance with reporting, and treated any application for relief as “speculative,” and made flight risk finding not even alleged by the government or even discussed at the hearing, thus depriving Petitioner of a meaningful opportunity to respond. Additionally, the IJ failed to consider alternatives to detention or the noncitizen’s ability to pay a bond and did not apply the burden of proof to the government. Respondents do not contest these points; instead they argue it is within the IJ’s “discretion.” Under the cases cited above and discussed more closely below, it is not. They are precisely the kinds of process defects that trigger this Court’s enforcement power.

C. Speculative Relief and Flight Risk Denials

The IJ’s flight-risk analysis rested almost entirely on speculation that, because Petitioner is in § 240 removal proceedings and may ultimately receive a final order of removal, he has a “significant incentive to abscond,” coupled with an unprecedented requirement that he show a “good-faith basis” to contest removability and a “significant likelihood” of success on future relief—standards found nowhere in the statute, regulations, or *Guerra*. The IJ summarily discounted Petitioner’s U.S. citizen fiancée and step-children and numerous letters of support without analysis, and DHS never argued that Petitioner was a flight risk at all. . Instead, he improperly speculated that respondent has not demonstrated a good-faith basis to contest removability or a significant likelihood that he can demonstrate statutory eligibility for relief.” (emphasis added). Besides constituting impermissible speculation, the IJ unlawfully imposed an unprecedented, heightened standard of “good-faith” and “significant likelihood” that is not authorized by the statute, regulations, or case law.¹⁷

¹⁷ The BIA—prior to 2026—has repeatedly reversed, vacated, or remanded IJ’s “flight risk” determinations, emphasizing that IJs must consider noncitizen’s residence and family ties, pending applications for relief, financial support from sponsors, changed procedural posture in the underlying removal case, and less restrictive alternatives to detention before concluding that no bond is appropriate. In none of these was “speculative” relief mentioned and an application or eligibility for relief was mentioned as a positive factor to mitigate flight risk. A massive body of BIA decision summaries is attached in Exhibit 5.

Courts have repeatedly rejected similar flight-risk rationales based on unlawful status, delay in seeking relief, or generic assumptions about all recent entrants or all respondents in removal proceedings, and have held that reciting a heightened burden in name only is incompatible with due process. See *Alvarado Lopez v. Dillman*, 2026 WL 688958, at *6–7 (E.D. Va. Mar. 11, 2026)¹⁸; *Argueta Portillo v. Bondi*, No. 1:26-cv-122 (E.D. Va. Mar. 2, 2026), Dkt. 16; *Picado v. Hyde*, 2026 WL 352691, at *7 (D.R.I. Feb. 9, 2026)¹⁹; *S.E. v. Noem*, 2026 WL 627456, at *3–4²⁰; *Sales v. Johnson*, 323 F. Supp. 3d 1131, 1141 (N.D. Cal. 2017) (granting habeas where government offered no evidence or argument on flight risk).

D. Regulations Demand Separation of Bond from Removal Proceedings

Further, the regulations require that custody and bond determinations be kept strictly separate from the adjudication of deportation or removal, providing that “consideration by the [IJ] of an

¹⁸ IJ’s reliance on unlawful presence, delay in seeking relief, and speculation about marriage “did not provide a constitutionally sufficient basis” for a flight-risk finding. The court rejected the IJ’s conclusion that Alvarado was a flight risk due to her delay in seeking to legalize her status and continuing to live in the U.S. unlawfully after her removal proceeding was dismissed. *Id.* The court found that the IJ’s conclusion constituted a violation both § 1226(a)’s requirement of an individualized hearing and fundamental due process principles. *Id.* at *7 (“A noncitizen’s unlawful status cannot provide a legitimate consideration to [] deny [] release on bond under § 1226(a) given that every individual who appears before an [IJ] for custody redetermination lacks lawful status.”) (citing *Argueta-Portillo v. Bondi, et al.*, 1:26-cv-122-MSN-LRV, Dkt. No. 16 (E.D. Va. Mar. 2, 2026) (“an individual’s bond hearing fails to comport with due process where an [IJ] relies on considerations that would lead to an automatic denial of bond in all cases.”)). Likewise, the court found the IJ’s reliance on Alvarado’s working without authorization and speculation that her recent marriage was to avoid removal similarly did “not provide a constitutionally sufficient basis upon which to have denied Alvarado’s request for release on bond based on the conclusion that she poses a risk of flight.” *7.

¹⁹ Court held a bond hearing was constitutionally inadequate where and IJ relied on only an uncorroborated police report but such evidence “could not have, as a matter of law, supported her” finding that the government bore its burden to establish the petitioner was a danger or “decision to deny Mr. Picado’s bond request.”

²⁰ Finding IJ’s reasoning paid mere “lip service” to clear-and-convincing standard and relied on blanket characterizations common to many detainees. The court granted petitioner’s motion to enforce where the petitioner claimed that the “government provided no evidence of present flight risk and the [IJ] misplaced the evidentiary burden, failed to hold the government to its heavy burden of proof, and failed to demonstrate impartiality.” The *S.E.* court agreed that by rendering a decision that was not based on any evidence in the record, the IJ was not acting as a “neutral arbiter” and that the decision was an abuse of discretion. *Id.*, at *3-*4 (IJ’s “‘reasoning and decision’ shows that invocation paid mere ‘lip service’ to that heightened standard.”) citing *Sales v. Johnson*, 323 F. Supp. 3d 1131, 1141 (N.D. Cal. April 27, 2017) (granting habeas petition where the IJ’s flight risk finding was not supported by clear and convincing evidence when the government did not present any evidence or even argue the flight risk factor). The *S.E.* court further found that the IJ’s reasoning—that people who “have been in the U.S. a short duration seeking fear-based relief with no family here and no better ties than that to be a flight risk”—constituted impermissible “blanket characterizations about circumstances common to many individuals in immigration proceedings, not individualized determinations as are necessary when applying a heightened evidentiary burden.” *Id.* at *4.

application or request of a respondent regarding custody or bond under this section **shall be separate and apart from**, and shall form no part of, any deportation or removal hearing or proceeding.” 8 C.F.R. § 1003.19(d).²¹ By denying bond on the ground that potential relief was “speculative,” and by making adverse, merits-like judgments about removability and future applications at a summary bond hearing, the IJ collapsed the very separation the regulation is designed to protect. That practice effectively converts the custody proceeding into a truncated merits adjudication—without the notice, evidentiary development, and procedural safeguards that attach in a merits hearing (adequate notice, opportunity to present evidence and witnesses, and a full record)—while allowing untested merits prejudgments to drive the custody outcome. Such an approach is inconsistent with § 1003.19(d), with *Guerra*’s focus on appearance and danger, and with basic due process.²² “forming part of” the removal case, in tension with 8 C.F.R. § 1003.19(d) and its predecessors, which have long required that custody decisions be “separate and apart from any deportation hearing or proceeding.” It also deprives Petitioner of the procedural safeguards that attach to a merits hearing—adequate notice, opportunity to present evidence and witnesses, and a full record—while allowing merits prejudgments to drive the outcome of bond. In this way, using conclusory labels like “speculative” to dismiss relief at bond hearing stage is not a neutral application of custody standards, but an improper and biased merits determination made without

²¹ The IJ’s task at bond is to decide custody based on flight risk and danger, not to conduct an abbreviated merits trial on applications for relief. A respondent’s intent to pursue relief, and at most a prima facie showing that such relief is available, may be relevant to assessing incentives to appear; but a detailed assessment of hardship, nexus, credibility, statutory bars, and discretionary factors is reserved for the full merits hearing, with the procedures and evidentiary development that proceeding provides.

²² Using conclusory labels like “speculative” to dismiss relief at bond hearing stage is not a neutral application of custody standards, but an improper and biased merits determination made without the due process protections that the regulations and the structure of proceedings contemplate. Therefore, Petitioner’s bond hearing did not comply with Due Process or the regulations. In Petitioner’s case, IJ Blake Doughty, made a wholly speculative finding of flight risk that was not raised by DHS and could apply to all individuals unlawfully present and then failed to consider the equities or Petitioner’s ability to pay when setting at \$40,000 bond. Because of this, Petitioner remains detained as he is unable to pay this exorbitant and unjustified bond amount which is a sharp departure of any bond amount set by Georgia IJs and the BIA previously. Exhibit 5.

the due process protections that the regulations and the structure of proceedings contemplate. Therefore, Petitioner's bond hearing did not comply with Due Process or the regulations.

E. Even Assuming a Standard *Guerra* Hearing Was All the Court Required, the IJ Did Not Provide One.

Even if the Court accepted Respondents' premise that its January 9, 2026 Order called only for an ordinary § 1226(a)(2) custody redetermination under *Matter of Guerra*, with the burden formally on the noncitizen, the hearing Petitioner received still fell well short of what *Guerra* and subsequent BIA precedent require. *Guerra* directs IJs to assess flight risk and danger based on a non-exclusive list of factors—fixed address, length of residence, family ties, employment history, record of appearance, criminal and immigration history, attempts to flee, and manner of entry—and to weigh those factors in an individualized manner, explaining why detention or a particular bond amount is necessary to ensure appearance and protect the community.

Here, the IJ did not meaningfully engage with the core *Guerra* factors on the record.²³

²³ The undisputed evidence shows that Petitioner has lived for years at a fixed address in Georgia with his U.S. citizen fiancée and her U.S. citizen children, has maintained steady employment, enjoys extensive community support, and has an impeccable record of appearance and compliance with OREC/ISAP conditions, including voluntarily appearing at the ICE appointment where he was re-detained. Yet the IJ's oral ruling and written decision did not meaningfully analyze these equities; instead, they treated placement in § 240 proceedings—and the abstract possibility of a final removal order—as creating an “inherent” incentive to abscond that outweighed Petitioner's strong ties and perfect compliance, the opposite of the individualized inquiry *Guerra* Requires. The IJ also improperly collapsed custody and merits by speculating that Petitioner lacked a “good-faith basis” to contest removability and a “significant likelihood” of success on future relief and using that speculation as the principal flight-risk factor, in conflict with 8 C.F.R. § 1003.19(d) and BIA precedent recognizing that the prospect of relief is at most one factor to be weighed, not a dispositive proxy for flight risk. The divergence from *Guerra* is confirmed by the BIA's unpublished bond decisions summarized in Petitioner's Exhibit 5—in cases such as *D-R-P-T*- (BIA Oct. 24, 2016), *D-K*- (BIA Mar. 15, 2016), *G-R-A-C*- (BIA May 9, 2018), and *H-H-R*- (BIA Jan. 15, 2019), the Board repeatedly reversed “no bond” or effectively punitive bond determinations where IJs relied on recent unlawful entry, lack of lawful status, pending or “speculative” relief, or limited documented ties but failed to fully consider positive equities and whether some reasonable bond or conditions could mitigate flight risk, typically directing that bonds be set in the \$1,500–\$10,000 range. Measured against that body of *Guerra*-based BIA case law, Petitioner's equities—no record of violence or recent criminal convictions, long-term residence at the same address, co-residence with and support of a U.S. citizen fiancée and her U.S. citizen children, strong employment and community support, and nearly three years of flawless OREC/ISAP compliance—are at least as favorable as, and often stronger than, those of respondents for whom the Board ordered bond or remanded for a reasonable amount. Finally, the IJ's decision to set a \$40,000 cash-only bond, without any inquiry into Petitioner's financial circumstances or consideration of alternatives such as continued ISAP supervision, bears no resemblance to how *Guerra* has been applied in practice: as the Flight Risk Cases show, in comparable or weaker cases the Board has required IJs to consider ability to pay and less restrictive conditions and has found substantial but realistic bond amounts in the low thousands sufficient to mitigate flight-risk concerns. Setting

IV. APPROPRIATE RELIEF

Given the defects in Petitioner's bond hearing and the broader record described above, the Court should enforce its Order and grant effective habeas relief as specified in Petitioner's Motion. In *Mathon* and *Hechavarria*, once the courts found non-compliance with their conditional bond-hearing orders, they granted enforcement motions and ordered release rather than remanding for yet another hearing that would simply prolong unlawful detention. Consistent with 28 U.S.C. § 2243, this Court likewise has authority to order immediate release or set bond directly. Petitioner's primary request is immediate release under appropriate conditions of supervision set by this Court; in the alternative, if the Court declines to order release, Petitioner seeks a prompt, constitutionally adequate bond hearing before a different IJ with the protections described herein.

Respectfully submitted this 17th Day of March, 2026.

/s/ Karen Weinstock

Karen Weinstock
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an unprecedented \$40,000 cash-only bond on a detained noncitizen of modest means, without findings on ability to pay or why a lower bond or conditions would not suffice, is for all practical purposes a denial of bond, not an individualized *Guerra* determination; thus, even accepting Respondents' framing of the January 9 Order, the hearing Petitioner received was neither a constitutionally adequate § 1226(a) bond hearing nor a faithful application of *Guerra* and bond jurisprudence. The defects in Petitioner's January 28, 2026 hearing closely mirror those that led other courts to enforce conditional writs in *Mathon* and *Hechavarria*. In *Mathon*, the IJ treated the court-ordered hearing as a "typical" § 1226(a)/*Guerra* redetermination, invoked broad discretion, failed to meaningfully apply the court-ordered clear-and-convincing standard, and refused to seriously consider less restrictive alternatives; in *Hechavarria*, the court likewise enforced its conditional writ after concluding that the IJ had only "paid lip service" to the clear-and-convincing standard, continued to place the practical burden on the detainee, and refused to consider alternatives as ordered. Here, IJ Doughty similarly emphasized his discretion, supplied his own speculative theory of flight risk based largely on the mere fact of being in removal proceedings, ignored DHS's failure to assert flight risk, and declined to consider alternatives or Petitioner's ability to pay before imposing an effectively unpayable \$40,000 cash-only bond; framed against *Mathon* and *Hechavarria*, Petitioner's motion simply asks this Court to reach the same conclusion—that Respondents failed to comply with the conditional writ and that further habeas relief is warranted.

CERTIFICATE OF SERVICE

I certify that on March 17, 2026, I electronically filed the foregoing Document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

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