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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JESUS FAJARDO-GARFIAS,

Petitioner,

v.

ROSE THOMPSON, Warden,
Karnes County Immigration Processing Center;

MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security; and

TODD BLANCHE, Attorney General of the United States, in their official capacities,

Respondents.

Case No. 5:26-cv-4300

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Jesus Fajardo-Garfias, is a Mexican national who has resided in the U.S. since April 27, 2025. He is the spouse of a U.S. citizen and the father of a 8-month old U.S. citizen child, he has no criminal charges or convictions and has never fled from immigration authorities. Petitioner has been working to obtain lawful status in the United States based on his marriage to a U.S. citizen and the fact that he lawfully entered the U.S. with a visa. He currently has an I-130 Petition for Alien Relative pending with US Citizenship and Immigration Services (USCIS).
2. Petitioner is in the physical custody of Respondents at Karnes County Immigration Processing Center in Karnes City, Texas. Petitioner was detained in Austin, Texas after being pulled over by a state trooper. Despite being initially stopped by a state trooper, no charges were filed against him and he has no criminal history.
3. On May 12, 2026, Petitioner had a bond hearing before Immigration Judge (IJ) Crossan at the Pearsall Immigration Court. Petitioner's counsel submitted proof of pending I-130 Petition for Alien Relative along with evidence to show ties to the U.S. and good moral character. The Department of Homeland Security (DHS) only filed Petitioner's Form I-213 which confirmed Petitioner has no criminal history, entered with a visa and was arrested by an 287(g) as part of a local operation. DHS confirmed they had no evidence for Petitioner being a danger, however, expressed concern of Petitioner being a flight risk due to the recency of the filed Petition I-130. The basis of their argument was that he overstayed his visa, and did not attempt to fix his status during that time. The Immigration Judge denied bond claiming Petitioner was a flight risk, but refused to state on the record the reason for why he determined he was a flight risk.

4. The Immigration Judge immediately proceeded to file a written decision where he detailed the reasons for why he determined Petitioner to be a flight risk, which focused on him having limited relief available to him at the time simply because the I-130 had recently been filed and it could take up to one year to be adjudicated. Further, because Respondent did not take action to correct his overstay until he was placed into removal proceedings.

5. Petitioner asserts that his detention violates the Due Process clause of the Fifth Amendment, and as such this Court should grant the petition for a writ of habeas corpus and order Petitioner's immediate release. Immediate release is the appropriate remedy because the systematic transformation of the immigration court from a neutral adjudicatory body into an instrument of the administration's enforcement agenda has rendered it structurally incapable of providing Petitioner with the impartial tribunal and individualized assessment that a custody redetermination and due process requires. ***See* Exh. A, Supplemental Brief on Status of EOIR and Custody Redetermination Proceedings.**

6. In the alternative, if the Court finds that some form of custody determination is warranted, the Court should conduct its own bond hearing. At a bare minimum, if the Court declines to order release or conduct its own hearing, it should order a bond hearing before an immigration judge with explicit procedural safeguards and retain jurisdiction to review the determination to ensure compliance with due process.

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. Petitioner challenges the legality of his detention as a violation of constitutional law. These claims fall squarely within the habeas jurisdiction of federal district courts. None of the jurisdiction stripping provisions found at 8 U.S.C. § 1252(a)(2)(A), § 1252(g) and § 1252(b)(9) apply. The Court "retain[s] jurisdiction to review [a noncitizen's] detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition." *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005). The constitutionality of Petitioner's detention is precisely the question presented here. *See also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *2-6 (W.D. Tex. Oct. 21, 2025) (holding that none of jurisdiction-stripping provisions found at 8 U.S.C. § 1252(a)(2)(A), § 1252(g) and § 1252(b)(9) apply.); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025) (rejecting government's jurisdictional arguments); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *2-4 (W.D. Tex. Oct. 16, 2025) (same).

VENUE

11. Venue is proper with this Court because Petitioner is detained at Karnes County Immigration Processing Center in Karnes City, Texas, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

14. Petitioner, Jesus Fajardo Garfias, is a 20-year old citizen of Mexico, who resides in the United States with his U.S. Citizen wife and 8-month old U.S. Citizen child. He is currently detained at Karnes County Immigration Processing Center in Karnes City, Texas. He is in the custody, and under the direct control, of Respondents and their agents.

15. Upon information and belief, Respondent Rose Thompson, is the Warden of Karnes County Immigration Processing Center, and she has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

16. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Mullin is responsible for the implementation and enforcement of the Immigration and Nationality

Act, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention / custody. Respondent Mullin is a legal custodian of Petitioner.

17. Respondent Todd Blanche is sued in his official capacity as the acting Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Blanche is a legal custodian of Petitioner.

STATEMENT OF FACTS

18. Mr. Fajardo-Garfias (Petitioner) is a 20-year-old citizen of Mexico. He entered the United States on April 27, 2025, pursuant to a valid P1 visa. Prior to his last lawful entry to the United States, he married his U.S. citizen partner in 2024, and they now have an 8-months old U.S. citizen child.

19. On April 30, 2026, Petitioner was pulled over with no reasonable suspicion, and upon asking for documents, the officer realized Petitioner did not have a driver's license and valid car insurance. He was taken into custody as a result of a joint agreement between local law enforcement and immigration authorities at that time and turned over to the U.S. Department of Homeland Security (DHS). Through the 287(g) program, state and local law enforcement officers collaborate with the federal government to enforce federal immigration laws. He has now been in DHS detention since April 2026. Despite his arrest, he has not been charged with any crime and has no criminal history.

20. On May 12, 2026 a bond hearing was conducted with the Executive Office for Immigration Review (EOIR) before Immigration Judge Thomas Crossan. In spite of the

Petitioner presenting substantial evidence of his family ties in the U.S. and the fact that his U.S. Citizen spouse had filed a petition that would ultimately lead to his application for Lawful Permanent Residence in the U.S., IJ Crossan found that no amount of bond could ensure Petitioner's attendance at future hearings, and he ordered him to remain detained without bond. Ostensibly, per the IJ's written order, Petitioner's infraction of remaining in the U.S. after his visa expired, with the intention of applying for a benefit in the U.S. for which he is legally eligible, was a violation against U.S. immigration laws that was so severe that he did not merit release for any amount of bond. DHS did not present any evidence at the bond hearing to prove Petitioner would be a flight risk of a danger.

21. Petitioner's Counsel's argued that Petitioner is a desperate father wanting to go back with his family, has family willing and able to support him, has his own vehicle, a job to return to, a pending I-130 and as immediate relative, upon approval will be prima facie eligible for Adjustment of Status in the U.S. before the Immigration Court, has a U.S. daughter and a U.S. spouse. Additionally, that Petitioner has not had any criminal history, no prior interactions with law enforcement, no unlawful entries, has a sponsor willing to ensure he presents himself to court, and he won't want to risk not being able to be with his family.

22. Despite Petitioner's Counsel's arguments and evidence presented, the IJ was dismissive of any argument in support of granting Petitioner's request for a bond. This was so even though the factors set for in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) – BIA decision which elucidates the factors that an IJ should consider in determining bond– weighed strongly in favor of Petitioner. The record demonstrated that Petitioner satisfactorily satisfied the relevant Guerra factors, yet the Immigration Judge failed to

meaningfully consider this evidence and instead gave greater weight to only one factor, which was that Petitioner had limited relief at the moment. ***See* Exh. B, Bond Denial Order**

23. Petitioner now faces the impossible choice of remaining in detention while his I-130 application is pending and until it is adjudicated by USCIS, which will be at least months, or leaving the U.S. and be separated from his family for what may be years as his application is addressed through consular processing from abroad.

LEGAL FRAMEWORK

24. The present claim being brought by the Petitioner is that the lack of a fair and just custody redetermination hearing by the EOIR and his continued detention by DHS constitute a denial of his Due Process rights. 8 U.S.C. 1226(e) precludes an alien from "challeng[ing] a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding his detention or release." *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003). However, this express preclusion is cabined in the immediate next sentence in *Jennings*, "§ 1226(e) does not preclude 'challenges [to] the statutory framework that permits [the alien's] detention without bail.'" *Id.* (quoting *Denmore*, 538 U.S. at 517). Indeed, where detainees challenged "the constitutionality of the entire statutory scheme under the Fifth Amendment," § 1226(e) did not preclude their claims. *Id.* Accordingly, Petitioner challenges the procedures used at the bond hearing, alleging that the hearing he received violates Due Process. See *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 236 (W.D.N.Y. 2019). And "[§] 1226(e) contains no explicit provision barring habeas review." *Demore*, 538 U.S. at 517.

25. Several circuit courts have similarly found that § 1226(e) does not deprive the District Court of jurisdiction to review a Due Process challenge like the one at issue here. *Soto-Medina v. Lynch*, No. 1:25-CV-1704, --- F. Supp. 3d ----, 2026 WL 161002, at *3 (W.D. Mich. Jan. 21, 2026). *See, e.g., Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) ("To the extent the government is arguing that [§] 1226(e) deprives the district court or this court of jurisdiction, that claim fails: [petitioner] does not challenge the IJ's ultimate exercise of discretion, but rather 'the extent of the Government's detention authority under the statutory framework as a whole.'"); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) ("Whether [petitioner] received the due process to which he was entitled 'is not a matter of discretion' and is subject to judicial review."); *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011), *distinguished on other grounds by Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024) ("Although § 1226(e) restricts jurisdiction in the federal courts in some respects, it does not limit habeas jurisdiction over constitutional claims or questions of law."); *Miranda v. Garland*, 34 F.4th 338, 353 (4th Cir. 2022) (concluding that "§ 1226(e) does not bar our review"); *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018) ("Because [petitioner] does not challenge a particular action or decision, but rather 'the statutory framework that permits his detention without bail,' *Demore*, 538 U.S. at 517, § 1226(e) does not deprive the District Court or this Court of jurisdiction over [petitioner's] petition." (citation modified). In the present case, the Petitioner does not challenge the IJ's exercise of his discretion in weighing the applicable *Matter of Guerra* factors and the evidence submitted in Petitioner's case. Rather, this petition challenges the IJ's complete abdication of his duty to weigh those factors, his decision to ignore the evidence in

Petitioner's case, and his reliance on generalized, spurious reasoning to deny the Petitioner bond, in violation of his Due Process rights. As such, this Court has jurisdiction to hear Petitioner's claim in spite of any judicial limitations outlined in § 1226(e).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. As an initial matter, "[t]he doctrine of exhaustion of administrative remedies is well established in the jurisprudence of administrative law . . . [and] provides 'that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.'" *McKart v. United States*, 395 U.S. 185, 193 (1969) (citations omitted). Exhaustion serves two main purposes: first, it "gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court, and it discourages disregard of the agency's procedures[,]" and second, it "promotes efficiency [because] [c]laims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court." *Woodford v. Ngo*, 548 U.S. 81, 89 (2006) (citations and quotations omitted). Congress may codify the doctrine as a jurisdictional bar, and "[w]here Congress specifically mandates, exhaustion is required." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). "But where Congress had not clearly required exhaustion, sound judicial discretion governs." *Id.* Exhaustion in this context is not a jurisdictional requirement, but rather a "judge-made" prerequisite. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474-475 (11th Cir. 2015). In the absence of an applicable statute or rule mandating administrative exhaustion by Petitioner, the Court has discretion to decide if exhaustion should be required. *See McCarthy*, 503 U.S. at 144.

27. First, Petitioner asserts that the Due Process clause requires that he receive a bond hearing that comports with the bare minimum standards of constitutional due process."That determination is principally a legal question of constitutional interpretation and does not require the record that would be developed if the Court required Petitioner to exhaust his administrative remedies."*Soto-Medina v. Lynch*, 2026 WL 161002, at *3.

28. Second, though Petitioner is entitled to appeal his denial of bond to the Board of Immigration Appeals (BIA), an appeal to the BIA would be futile because the BIA does not have jurisdiction to adjudicate the constitutional issues raised in this case. *See In Re Rodriguez-Carrillo*, 22 I. & N. Dec. 1031, 1035 (BIA 1999) ("[N]either the Immigration Judge nor this Board may rule on the constitutionality of the statutes that we administer."). Even if the Court were to assume exhaustion is required in this case, the fact that the BIA cannot review the constitutional challenge raised in Petitioner's petition places this case squarely within an exception to the exhaustion requirement. In *McCarthy*, the Supreme Court recognized three circumstances where "the interests of the individual weigh heavily against requiring administrative exhaustion." 503 U.S. at 146. One of those circumstances is present when "an administrative remedy may be inadequate 'because of some doubt as to whether the agency was empowered to grant effective relief.'" *Id.* at 147 (quoting *Gibson v. Berryhill*, 411 U.S. 564, 575 n.14 (1973)). The Court provided as an example the exact situation here: "an agency . . . may be unable to consider whether to grant relief because it lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute." *Id.*

29. Further, other district courts have similarly excused administrative exhaustion where a petitioner raises a due process challenge to the discretionary bond process under §

1226(a). *See Soto-Medina*, 2026 WL 161002, at *4 (concluding exhaustion was not required because the petition raised a question of constitutional interpretation regarding the burden of proof in bond hearings, the BIA cannot review constitutional challenges, and BIA precedent placing the burden of proof on the noncitizen would likely require further judicial review); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237–38 (W.D.N.Y. 2019) (concluding that exhaustion was not required because delays inherent in a BIA appeal would result in petitioner's prolonged detention without due process and because petitioner's motion to enforce raised constitutional questions which the BIA has no jurisdiction to decide); *Alvarado Lopez v. Dillman*, No. 1:25-CV-2456, 2026 WL 688958, at *4–5 (E.D. Va. Mar. 11, 2026) (concluding that exhaustion was not required for a petitioner asserting a Fifth Amendment challenge to the procedures used during a § 1226(a) bond hearing); *see also Mathon v. Searls*, 623 F. Supp. 3d 203, 213 (W.D.N.Y. 2022) ("To the extent that [petitioner's] motion [to enforce] focuses on whether Respondent complied with the bond order, exhaustion of administrative remedies is not a precondition to this Court's review.").

30. In sum, because there is no statutory exhaustion requirement, and, in the alternative, because an exception to the exhaustion requirement applies, Petitioner should not be required to exhaust all remedies before the agencies or other venues, and this Court should excuse any potential failure to exhaust due to the severe nature of Petitioner's detention and the inability of the agency to adjudicate his constitutional claims.

LEGAL BACKGROUND AND ARGUMENT

The Current Administration has Transformed the EOIR into Another Enforcement Branch of the Administration's Deportation Campaign

31. For nearly two decades, IJs have conducted Section 1226(a) bond hearings under the multifactor framework established by the BIA in *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). The principal considerations for the IJ are whether the noncitizen poses a danger to persons or property, is a threat to national security, or poses a risk of flight. *Id.* at 38 (citing *Matter of Adenji*, 22 I. & N. Dec. 1102 (BIA 1999)). The factors in determining such risk and the appropriate amount of bond to mitigate that risk may include any or all of the following: (1) whether the noncitizen has a fixed address in the United States; (2) the noncitizen's length of residence in the United States; (3) the noncitizen's family ties in the United States, and whether they may entitle the noncitizen to reside permanently in the United States in the future; (4) the noncitizen's employment history; (5) the noncitizen's record of appearance in court; (6) the noncitizen's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the noncitizen's history of immigration violations; (8) any attempts by the noncitizen to flee prosecution or otherwise escape from authorities; and (9) the noncitizen's manner of entry to the United States. *Id.* at 40. More generally, due process in the administrative context requires that a noncitizen "(1) is entitled to factfinding based on a record produced before the decisionmaker and disclosed to him or her, (2) must be allowed to make arguments on his or her own behalf; and (3) has the right to an individualized determination of his [or her] interests." *Kamara v. Att'y Gen. of U.S.*, 420 F.3d 202, 211 (3d Cir. 2005). Additionally, Due Process requires consideration of financial circumstances and alternative conditions of release. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (finding that the government failed to provide

"adequate procedural protections" when setting a bond without considering financial circumstances or alternative conditions).

32. Petitioner plausibly asserts that his bond hearing was not individualized. IJ Crossan's decision has no meaningful findings as to flight risk aside from the fact that Petitioner is a flight risk given that he had limited relief available to him at the time simply because the I-130 had recently been filed and it could take up to one year to be adjudicated. The IJ further focused on why Petitioner did not take action to correct his overstay until he was placed into removal proceedings. Aside from these considerations, the decision identifies no individualized facts demonstrating Petitioner was likely to abscond if released.

33. As discussed above, the Court lacks jurisdiction to review IJ Crossan's discretion. But it can review the nature and structure of the opinion for the minimal indicia of Due Process. As indicated in the attached documentation, the EOIR has distinctly abandoned its role as neutral arbiter, which has been a systematic transformation from acting as a neutral adjudicatory body into an instrument of the administration's enforcement agenda. Respondent provided evidentiary documentation of marriage to his U.S. citizen spouse, birth certificate of his U.S. citizen daughter, stable domicile and employment, proof of I-130, Petition for Alien Relative, filed by his U.S. citizen spouse on his behalf, documentation showing a sponsor willing and able to support him, and ties to the community. ***See*** **Exh. C, Exhibits in Support of Custody Redetermination.** Nonetheless, IJ Crossan failed to take into account the fact that Petitioner will be eligible for Lawful Permanent Residence based on the marriage to his U.S. citizen spouse, has an 8-month old U.S. citizen daughter with his U.S. citizen spouse, has been living in the same residence since he arrived at the U.S., has had stable employment as a laborer since

2025, does not have any criminal history, has never fled from the authorities and entered legally. ***See* Ex. B, IJ Denial of Bond; Exh. C, Exhibits in Support of Custody Redetermination.**

34. In particular, IJ Crossan has taken a sharp deviation in his adjudication of bond cases since March of 2025. In fact, he has only granted bond in 19% of cases over that period. In comparison, IJ Crossan's grant of bond for the period of March 2019 to March 2020 was 51%. ***See* Exh. F, Mobile Pathways Statistics on Bond Grants for IJ Thomas Crossan.** Petitioner's Counsel has experienced this marked change in IJ Crossan's approach to bond decisions. ***See* Exh. D, Declaration of Claudia I. Chavarria.** The same experience has been shared nationwide with many practitioners and colleagues. ***See* Exh. G, Attorney Declarations.**

35. Once again, it must be emphasized that IJ Crossan found that *no amount of bond* could mitigate Petitioner's flight risk, given that he overstayed his visa and had no immediate relief from the Immigration Court, though his family-based application is currently pending. ***See* Exh. B, IJ Denial of Bond.** Unlike dangerousness, which the BIA has indicated requires an "A or B" finding that someone is a danger to the community or is not, flight risk determinations are based on a spectrum in which a higher amount of bond can be set for someone who may have more incentive to flee their hearings. *See Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009); *Matter of Drysdale*, 20 I&N Dec. 815, 817 (BIA 1994); *Matter of Rodriguez Pena*, 29 I&N Dec. 358 (BIA 2025); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of R-A-V-P*, 27 I&N Dec. 803 (BIA 2020); *Matter of Dobrotvorskii*, 29 I&N Dec. 211, 213-14 (BIA 2025). IJ Crossan's decision that no amount of bond could secure Petitioner's appearance at his next hearing stands in stark

contrast to the large body of cases that have addressed flight risk. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of R-A-V-P*, 27 I&N Dec. 803 (BIA 2020); *Matter of Dobrotvorskii*, 29 I&N Dec. 211, 213-14 (BIA 2025).

36. DHS did not present any evidence from which flight risk could be presumed. Further, DHS focused fully on the recency of the filed I-130, Petition for Alien Relative, on behalf of the Petitioner. DHS did not provide any evidence or argument to counter the *Guerra* factors and evidence presented by counsel to support her argument that Petitioner was not a flight risk. DHS relied fully on Petitioner being an overstay to claim flight risk. IJ Crossan's decision treats Petitioner's overstay of his visa and placement in removal proceedings as creating an inherent incentive to abscond. ***See* Exh. B, IJ Denial of Bond.** In other words, IJ Crossan's decision equates the fact that Petitioner did not "(cure)" by remaining in the U.S. with his family and applying for permanent residence from within the U.S., a benefit which the INA allows him, with a categorical presumption of flight risk, which is the opposite of an individualized assessment. *See 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). Further, IJ Crossan's speculation as to Petitioner's success on future relief does not support any reasonable inference of flight risk. *See Alvarado Lopez v. Dillman*, 2026 WL 688958, at *7 (E.D. Va. Mar. 11, 2026) (finding that IJ's speculation as to the merits of the petitioner's I-130 Petition did not support an inference of flight risk and therefore "did not provide a constitutionally sufficient basis" for a flight-risk finding). Taken together, these facts indicate an absence of the individualization required by the Due Process

clause.

37. Given that IJ Crossan now completely denies bond at an astonishing rate, and Petitioner's "violations" are extremely minor in light of his family ties and motivation to remain in the U.S. and attend his hearings, it is clear that IJ Crossan did not act as a "neutral arbiter" and approached Petitioner's case with extreme and devastating bias. This bias, in conjunction with the relevant circumstantial evidence submitted with this petition showing that the EOIR has become a de facto enforcer of the current administration's agenda, indicate that Petitioner did not receive an individualized assessment of his case, and the "no bond" rubber stamp he received violates fundamental fairness and his right to Due Process.

Respondents Violated Petitioner's Fifth Amendment Rights by Providing A Bond Hearing That Did Not Comport With Constitutional Due Process

38. Due process requires that immigration detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Demore*, 538 U.S. at 527 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Specifically, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm, and it must be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690–91. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). However, the current administration has radically transformed the immigration court system over the past year into a body that is now structurally incapable of upholding Petitioner's statutory and constitutional rights and of providing him with a fundamentally fair bond hearing. ***See* Exh. A, Supplemental**

Brief on Status of EOIR and Custody Redetermination Proceedings. IJ Crossan's bond hearings, including Petitioner's bond hearing on May 12, 2026, have not escaped this extreme politicization. Since August 2025 IJ Crossan has a demonstrated pattern and practice of denying bond to nearly 100% of noncitizens who come before him, which is a stark change from his prior bond rate of 70% from the years of 2013 to 2015, usually based on spurious and unsupported findings of "flight risk." ***Id.*** Such was the case at Petitioner's bond hearing, where the IJ failed to conduct an individualized analysis of the specific evidence in record and instead relied on generic characteristics that would apply to nearly any immigrant in the United States.

The IJ Violated The INA and Petitioner's Due Process Rights By Refusing To Actually Consider His Individual Circumstances

39. The IJ's justification for his refusal to grant Petitioner bond – his being "limited relief available to him before an immigration court at this time. The I-130 petition was filed 11 days ago, the day Respondent was served with his notice to appear.... [Petitioner] did not take action to correct his overstay matter until he was placed into removal proceedings," without any acknowledgment of the evidence in the record – shows how he failed to conduct any required individualized analysis. ***See*** **Exh. B, IJ Denial of Bond.** First, the IJ completely ignored all of the record evidence showing that Petitioner has developed significant ties to the United States, such as having stable employment, having a U.S. citizen spouse and U.S. citizen eight month old child and having a pending application that will ultimately lead to his lawful permanent residence in the U.S. The administrative record objectively shows that Petitioner is a law-abiding, responsible person who has every incentive to appear at future immigration court hearings in order to ensure that he is

ultimately able to gain lawful permanent status and remain in the U.S. with his wife and child. ***See* Exh. C, Exhibits in Support of Custody Redetermination.**

40. Further, given that IJ Crossan refused to provide on the record the basis for finding that Petitioner posed a flight risk, but immediately following the hearing, issued a written decision, which was written during the bond hearing, and finalized immediately following Petitioner's counsel's closing remarks, it appears that IJ Crossan had already reached a decision on Petitioner's case before fully considering all the mitigating factors. Moreover, IJ Crossan's finding that Petitioner is an unmitigable flight risk because he did not "cure" his visa overstay is legally and logically dubious for many reasons, including the fact that Petitioner was ostensibly in the process of "curing" his visa overstay by applying for Lawful Permanent Residence. *See Aguilon Fuentes v. Bondi*, 1:26-cv-167, Dkt. No. 14 at 5 (E.D. Va. Feb. 24, 2026) ("Petitioner's intent to file an application for cancellation of removal—and the Immigration Judge's speculation as to the merits of that application—supports no inference of flight risk."); *Mejia Orozco v. Lyons*, 1:25-cv-1762, Dkt. No. 20 at 6 (E.D. Va. Dec. 1, 2025) (granting motion to enforce where IJ denied bond based solely on perceived lack of viable claim for cancellation of removal); *Wilkins v. Doll*, No. 1:17-cv-2354, 2018 WL 3388032, at *2 (M.D. Pa. July 12, 2018) (finding that IJ erred by "rel[ying] entirely on the purported lack of relief available to [the non-citizen]"). IJ Crossan's placed undue emphasis on Petitioner's failure to cure his overstay, despite the fact that Petitioner had already hired an attorney and was in the beginning stages of applying for Lawful Permanent Residence. ***See* Exh. B, IJ Denial of Bond.** As the spouse of a U.S. citizen who entered the U.S. pursuant to a valid visa, he is prima facie eligible to gain lawful status in the U.S. IJ Crossan stated that Petitioner

failed to "correct his overstay matter." ***Id.*** Despite the lack of clarity as to what IJ Crossan meant in regard to the "cure," apparently Petitioner's perceived failure to "take action to correct his overstay" was a negative factor so egregious that IJ Crossan determined that no amount of bond whatsoever could ever secure Petitioner's appearance at a hearing. This further underscores the unreasonableness of IJ Crossan's pattern and practice of using such spurious logic to deny bond to nearly every noncitizen seeking bond. Ultimately, his reliance on generic characteristics, which are shared by virtually any immigrant who is in process of applying for lawful status but has not been granted status yet, effectively converts discretionary detention under Section 1226(a) into mandatory detention without bond. *See Mendez Trigueros v. Guadian*, 1:26-cv-205, Dkt. No. 13 at 6 (E.D. Va. Feb. 18, 2026) ("Were a noncitizen's unlawful status . . . a proper basis upon which to deny bond, the discretionary detention under § 1226(a) . . . would become a de facto mandatory § 1225 detention."). Indeed, extrinsic evidence discussed below confirms that IJ Crossan has an unlawful pattern and practice of denying bond to nearly 100% of noncitizens based on alleged "flight risk" and "speculative relief." ***See*** **Exh. D, Declaration of Claudia Chavarria; Exh. F, Mobile Pathways Statistics on Bond Grants for IJ Thomas Crossan** IJ Crossan did not provide Petitioner with a bond hearing to determine if Petitioner is a danger to the community or a flight risk. Instead, he merely provided the appearance of such hearing, and as such he violated Petitioner's right to a fundamentally fair hearing pursuant to the Due Process clause of the Fifth Amendment.

A. IJ Crossan's Unlawful Pattern And Practice Of Denying Bond To Noncitizens Based on Spurious "Flight Risk" Findings is Further Evidence Petitioner's Bond Hearing was Inadequate

41. What happened to Petitioner has unfortunately happened to many other noncitizens seeking release on bond before IJ Crossan in recent months, which provides important context and further evidence that Petitioner's Due Process rights were violated in Petitioner's hearing. The Georgia Asylum and Immigration Network (GAIN) operates a "court watch" program at Stewart. ***See* Ex. D, Declaration of Alizeh Sheik, Esq.** From January 22 until February 17, 2026, volunteers observed sixteen hearings before IJ Brown where a decision was issued. Id. In four of those hearings, she found no jurisdiction to grant bond. Id. In the twelve hearings where she found jurisdiction, IJ Brown denied bond to every single individual (100% denial rate). Id. In seven of the twelve cases where IJ Brown denied bond, flight risk was the sole reason for denying bond. Id. This is in sharp contrast to IJ Crossan's prior practices: "According to our prior court watch data for August 2025 until July 2026, IJ Crossan denied bond in 344 out of 390, cases where he found that he had jurisdiction, resulting in only a 11.8% approval rate." *Id.*

42. In a major blow to transparency and accountability, EOIR announced a new policy that prohibited individuals who are not parties to an immigration court's otherwise-public hearings to observe the court's proceedings over Webex, requiring any non-party who wishes to observe to appear in person at the respective court.[1]

B. The Current Administration Has Transformed the Immigration Courts into Detention and Deportation Machines

43. During the last year, EOIR, in apparent coordination with DHS, has systematically dismantled the integrity of the immigration court system to turn it into an extension of

[1] Immigration Policy Tracking Project, EOIR Limits Online Access to Immigration Court Proceedings to the Parties to the Proceeding (Nov. 1, 2025), https://immpolicytracking.org/policies/eoir-limits-online-access-to-immigration-court-proceedings-to-the-parties-to-the-proceeding/.

DHS' deportation and detention operations. The administration has used a variety of means to coerce IJs into submission, but the most effective method so far is to simply fire dozens of IJs who issued decisions that conflict with the administration's anti-immigrant policies. Many other IJs who are not willing to support the administration's extreme deportation agenda have resigned or retired early.

44. As of September 26, 2025, the administration has removed 128 immigration judges. The loss of nearly 25% of the total number of IJs at EOIR at the beginning of 2025, along with the fear among the remaining IJs of losing their livelihood if they "step out of line," has utterly undermined any sense of the immigration court as a forum for the dispassionate, reasoned decision-making that the Constitution requires. Rather, as many former IJs have attested, "due process is dead in the immigration courts." [2]

45. The terminated and resigned judges report three consistent themes. First, explicit pressure to serve as instruments of mass deportation rather than neutral adjudicators. Former IJ Emmett Soper stated: "I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives."[3] Former IJ Jeremiah Johnson similarly understood "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially."[4] Former IJ George Pappas was even more direct: "They were told to

[2] Radley Balko, *"The courts are dead." An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), https://radleybalko.substack.com/p/the-courts-are-dead-an-interview

[3] Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog.

[4] Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/.

facilitate deportation... Due process is dead in immigration courts."[5] Second, a pervasive climate of fear designed to ensure compliance. Former IJ David C. Koelsch described it as "an atmosphere of paranoia and fear, which is exactly what they want."[6] Former IJ Anam Petit observed: "There's a climate of fear...Judges feel like, if they step a toe out of line right now...or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings."[7] Former IJ Carmen Maria Rey Caldas similarly described judges working "under 'constant threat' of getting fired if they don't follow certain rules from leadership."[8] EOIR publicly told IJs as much in a policy memorandum dated June 27, 2025, warning IJs not to be "adjudicatory outliers," at risk of "close examination and potential action."[9] Third, the inevitable compromise of judicial independence when self-preservation requires favoring the government. Former IJ Elizabeth Young explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'"[10] Former IJ Sarah Cade reached her breaking point: "I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and I went to private practice."[11] A parallel purge occurred at the BIA, which was reduced from 28

[5] Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside.
[6] Poggio, *supra* note 7.
[7] Eric Katz, *'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings*, Gov't Executive (Nov. 14, 2025), https://www.govexec.com/management/2025/11/climate-fear-immigration-judges-say-functioning-their-court-system-jeopardy-due-trumps-firings/409544/.
[8] Isabela Dias, *"Fired for No Reason": Former Immigration Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9, 2025), https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/.
[9] Exec. Off. for Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf.
[10] Poggio, *supra* note 7.
[11] Poggio, *supra* note 7.

members to 15 members and resulted in all of President Biden's appointees to the BIA being fired.

46. The statistical impact on outcomes is stark. As of January 22, 2026, the reconstituted BIA has issued 71 published decisions. Of those, 69 decisions (97%) favored the administration. By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions. Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% progovernment outcomes—achieved through wholesale termination of one administration's appointees—speaks for itself. The message to remaining IJs is unmistakable: neutrality is a terminable offense. No adjudicator can remain impartial when faced with the choice between upholding due process and keeping their position. The IJs at the Pearsall Immigration Court are not immune to these political pressures. As discussed above, they are implementing the administration's "no bond" policy by finding nearly every noncitizen who appears before them to be a "flight risk" and therefore ineligible for bond. Although this pattern and practice is alarming, it should perhaps not be surprising in the current environment: every IJ now operates under the understanding that granting bond may cost them their livelihood.

ALL THREE MATHEWS FACTORS WEIGH IN PETITIONER'S FAVOR

47. In evaluating the proper remedy, the Court uses the factors from *Mathews v. Eldridge* balancing test. 424 U.S. 319, 334 (1976). "Due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). To identify "the specific dictates of due process" the Court must consider (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 substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural safeguard would entail." *Id.* The Court addresses each factor in turn to determine the proper allocation of the burden of proof here.

1. Private Interest

48. The first is "the private interest that will be affected by the official action[.]" *Mathews*, 424 U.S. at 335. One of the "most elemental of liberty interests" is to be free from detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Even when detained to facilitate removal, the Supreme Court "repeatedly has recognized that civil commitment for *any* purpose constitutes a significant deprivation of liberty." *Addington v. Texas*, 441 U.S. 418, 425 (1979) (emphasis added). The private interest is necessarily the individual liberty interest by the person in confinement alleging a due process violation. "[I]mmigration detention is an extraordinary liberty deprivation that must be 'carefully limited.'" *United States v. Salerno*, 481 U.S. 739, 750 (1987). Finally, it is important to recognize that the deprivation of liberty that individuals detained under section 1226(a) experience is "not the result of a criminal adjudication." *Velasco Lopez*, 978 F.3d at 851; *see Hernandez-Lara*, 10 F.4th at 36 ("Unlike [§] 1226(c), [§] 1226(a) applies to a wide swath of noncitizens, many of whom . . . have no criminal record at all."). "[T]he Supreme Court is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Id.* (citation modified).

49. Petitioner has been in detention since April 30, 2026, for over two months, without a

criminal conviction or final order of removal against him. He has a lawful path to permanent residence through his U.S. citizen spouse, and his detention is presently causing terrible hardship on him and his U.S. citizen wife and child. As such, this factor weighs in Petitioner's favor.

2. Risk of Erroneous Deprivation

50. The second factor is "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. "[A]t this stage in the *Mathews* calculus, [the Court] consider[s] the interest of the erroneously detained individual." *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1339 (quoting *Hamdi*, 542 U.S. at 530).

51. First, the mere fact of detention means non-citizens are likely to have difficulty gathering evidence on their behalf. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 30 (1st Cir. 2021); *J.G.*, 501 F. Supp. 3d at 1337; *Soto-Medina*, 2026 WL 161002, at *8; *see also Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013) (noting detained noncitizens "have little ability to collect evidence"). As Judge Lawson put it: Incarceration restricts the noncitizen's ability to communicate with attorneys, family members, or other individuals who may present testimony or have access to the noncitizen's records. Limited resources and investigative tools increase the likelihood that the factual record developed at the bond hearing will be incomplete. An incomplete record creates a considerable risk of error in the IJ's findings and impairs the BIA's ability to correct erroneous deprivations. *J.G.*, 501 F. Supp. 3d at 1337. He went on to point out the imbalance of resources between a detainee and the Government, which has substantial resources yet isn't required to present "a shred of evidence." *Id.*; *see Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (noting that

"the Government had substantial resources to deploy" and "to the extent the Government did not have the necessary information at its fingertips, it had broad regulatory authority to obtain it."). Second, proving a negative as to danger and risk of flight can be more difficult than proving a cause for concern. *See Soto-Medina*, 2026 WL 161002, at *8 (citing *Hernandez-Lara*, 10 F.4th at 31); *see also Elkins v. United States*, 364 U.S. 206, 218 (1960) ("[A]s a practical matter it is never easy to prove a negative."). Third, "noncitizens subject to immigration detention often lack full proficiency in English." *Hernandez-Lara*, 10 F.4th at 30. Finally, "those facing removal have no right to counsel 'and very often cannot obtain counsel on their own, particularly if they are detained.'" *See Soto-Medina*, 2026 WL 161002, at *8 (citing *Hernandez-Lara*, 10 F.4th at 30).

52. Further, the fact that current procedure allows an IJ to consider a non-exhaustive list of factors, neither "ameliorate[s] the challenges an incarcerated non-citizen faces in gathering and presenting evidence[,]" *J.G.*, 501 F. Supp. 3d at 1338, nor "reduce[s] the risk of error caused by the regulations' burden allocation." *Hernandez-Lara*, 10 F.4th at 32. The risk of an erroneous deprivation under the current bond procedure is significant and is not abated by available administrative review. *See J.G.*, 501 F. Supp. 3d at 1337–38. "Where the risk of erroneous deprivation is high, and the deprivation the individual faces is severe, then modest, additional procedural safeguards carry high value." *Id.* at 1338–39. Thus, the second *Mathews* factor weighs in favor of Petitioner.

3. Government and Public Interests

53. Further, the Supreme Court has instructed that "[i]n striking the appropriate due process balance the final factor to be assessed is the public interest. This includes the administrative burden and other societal costs that would be associated with" the

additional process. *Mathews*, 424 U.S. at 347. The First and Second Circuits addressed the significant societal costs associated with unnecessary detention, i.e., the detention of non-citizens who are not shown to be a danger or a flight risk. "[N]oncitizens subject to immigration detention include spouses, children, and parents of U.S. citizens, caretakers of children and elderly relatives, and leaders in religious, cultural, and social groups." *Hernandez-Lara*, 10 F.4th at 33. "When the Government incarcerates individuals it cannot show to be a poor bail risk for prolonged periods of time . . . it separates families and removes from the community breadwinners, caregivers, parents, siblings and employees." *Velasco Lopez*, 978 F.3d at 855. "Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33. Petitioner contends that the Respondents will not be able to identify any significant, specific public interest reasons for the Petitioner's detention.

54. Section 1226(e) states that "[n]o court may set aside any action or decision ... under this section regarding ... denial of bond." 8 U.S.C. § 1226(e). That language does not foreclose judicial review of all challenges to a noncitizen's bond. The Supreme Court has interpreted § 1226(e) to allow habeas claims and constitutional challenges. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (discussing jurisdiction-stripping provisions); *Demore v. Kim*, 538 U.S. 510, 517 (2003) ("Section 1226(e) contains no explicit provision barring habeas review, and we think that its clear text does not bar [a noncitizen's] constitutional challenge....").

55. The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S.

298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted"). Here, because ordering another Section 1226(a) bond hearing before EOIR–a clearly compromised adjudicatory body–would not properly redress the statutory and constitutional violations present in this matter, Petitioner urges the court to provide an alternative corrective measure.

56. Immediate release is the most appropriate remedy in the present case because ordering a second bond hearing before the EOIR – a clearly compromised adjudicatory body – would likely not redress the statutory and constitutional violations present in this matter. See, e.g., *Wolfe v. Clarke*, 718 F.3d 277, 279 (4th Cir. 2013) (affirming immediate release as proper remedy for failure to comply with conditional writ and remanding on separate grounds). "In recent months, courts 17 across the country have ordered the release of detainees in similar situations" in response to their habeas petitions. *Moctezuma v. Henkey*, No. 1:25-CV-00741, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (ordering immediate release and collecting cases). Numerous district courts have also granted immediate release in response to the widespread occurrence of due process violations in bond hearings conducted by EOIR following the conditional grant of a noncitizen's habeas petition. See, e.g., *Flores v. Blanche*, No. 1:26-CV-1399-RP, 2026 WL 1603561 (W.D. Tex. June 4, 2026); *Alvarez v. Ortega*, No. SA-26-CA-03339-XR, 2026 WL 1611973 (W.D. Tex. June 3, 2026); *Ribero-Ardila v. Rodriguez*, No. 5:26-CV-0689-JKP,

2026 WL 990025 (W.D. Tex. Apr. 13, 2026); *S.E. v. Noem*, et al., No. 1:26-CV-00356, 2026 WL 627456 (E.D. Cal. Mar. 5, 2026); *A.D. v. Oddo*, No. 3:25-cv460, Dkt. No. 40 (W.D. Pa. Feb. 12, 2026); *Picado v. Hyde*, No. 1:26-cv-00065-JJM-PAS (D.R.I. Feb 9, 2026); *Uzzhina v. Chestnut*, No. 1:25-CV-01594, 2025 WL 3458787 (E.D. Cal. Dec. 2, 2025); *Y.S.G. v. Andrews*, 2:25-cv-01884, 2025 WL 2979309 (E.D. Cal. Oct. 22, 2025). Moreover, in this case, "Respondents have failed utterly to articulate a legitimate interest in the Petitioner being detained, and there is no evidence that he is a flight risk or poses a danger to the community." *Quijada Cordoba v. Knight*, No. 1:25-CV-00605-BLW, 2025 WL 3228945, at *9 (D. Idaho Nov. 19, 2025). Petitioner's lack of criminal history, active pursuit of lawful permanent status, significant familial and community ties to the United States, and history of stable employment all support his immediate release. No reasonable adjudicator could find that he is a risk of harm to other persons or property, nor that he is not likely to appear at future hearings. "Without a legitimate interest in [his] detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through [his] continued detention." *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025). Thus, immediate release is the most appropriate remedy here. To avoid any potential retaliation, this Court should also enjoin Respondents from re-detaining Petitioner or imposing any other conditions of release (such as electronic monitoring) that were not in effect before his detention, unless and until there is a material change in Petitioner's circumstances warranting such action and Respondents provide Petitioner with a pre-deprivation hearing where Respondents bear the burden to justify the need for detention.

57. Alternatively, if this Court feels that a new custody determination is warranted, the Court should mandate a new bond hearing before EOIR, *but with additional procedural safeguards* to ensure that Petitioner's due process rights are respected. Specifically, the Court should order the following: **First,** DHS shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk to "[reflect] the concern that '[b]ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (quoting *German Santos v. Warden, Pike Cnty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020)); *see also Velasco*, 978 F.3d at 855 n.14; *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021). **Second,** the Court should require that the Immigration Judge states, orally and/or in writing, what evidence submitted by DHS satisfies that burden, if any. In conducting that analysis, the IJ must first determine whether DHS's evidence, standing alone, meets that burden. Only after making that determination may the IJ consider whether any evidence submitted by Petitioner rebuts, mitigates, or otherwise undermines DHS's showing. *See Arredondo v. Baltazar*, No. 1:25-cv-03040, Dkt. No. 26 at 15-16 (D.Col. Dec. 18, 2025). **Third,** the Immigration Judge must also explicitly consider whether any amount of bond and/or additional conditions of release would be sufficient to mitigate any perceived flight risk and must consider Petitioner's ability to pay in setting bond. *See Hernandez*, 872 F.3d at 991; *Black v. Decker*, 103 F.4th 133, 158 (2d Cir. 2024). **Fourth,** the Court should prohibit the government from invoking the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2) because its application violates the procedural due process rights of noncitizens granted bond. *See, e.g., Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521, at *8 (S.D.

Tex. Nov. 14, 2025). **Fifth,** this Court should retain jurisdiction to review the immigration judge's bond decision to ensure compliance with the Court's order and due process. Without these additional procedural safeguards, there is no reasonable expectation that Mr. would receive a constitutionally sound bond hearing before EOIR.

CONCLUSION

Because Respondents have not and cannot provide Petitioner with a constitutionally adequate bond hearing, and because there is no reasonable basis to conclude that he is a danger or a flight risk, this Court should order his immediate release, or in the alternative order a new bond hearing *with additional procedural safeguards.* To avoid retaliation, this Court should also enjoin Respondents from imposing any additional conditions of release (such as electronic monitoring) or from re-detaining Petitioner unless and until they can show that there has been a material change in Petitioner's circumstances that would warrant such action in a pre-deprivation hearing.

CAUSES OF ACTION

COUNT ONE
Violation of Fifth Amendment Right to Due Process

58. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

59. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.CT. 2491, 150 L.Ed.2D 653 (2001).

60. Petitioner has a fundamental interest in liberty and being free from official restraint.

61. The government's mandatory detention of Petitioner without affording him any real, fair, and meaningful opportunity to obtain a custody redetermination to determine whether he is a flight risk or danger to others violates his right to Due Process pursuant to the Fifth Amendment.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter and maintain jurisdiction to the extent necessary to ensure Respondents' compliance with any order this Court may issue;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that the refusal to allow Petitioner a fair and meaningful bond redetermination hearing before an immigration judge violates the Due Process clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus requiring that Respondents immediately release the Petitioner, or, in the alternative, provide a custody redetermination hearing in which the government bears the burden of showing that Petitioner is a flight risk or a danger to the community by clear and convincing evidence;

(5) Maintain jurisdiction over the Petitioner until the Respondents have properly complied with any Orders of this Court;

(6) Order further relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Claudia I. Chavarria
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Attorney for Petitioner

Dated: July 9, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jesus Fajardo Garfias, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this July 9, 2026.

/s/ Claudia I. Chavarria
Claudia I. Chavarria, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE
Fajardo-Garfias v. Thompson et al
Case No. 5:26-cv-4300

I hereby certify that on July 9, 2026 I have mailed by United States Postal Service the Petition for Writ of Habeas Corpus by certified mail to the following:

Stephanie Rico
Civil Process Clerk Office of the United States Attorney for the Western District of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Rose Thompson
Warden at Karnes County Immigration Processing Center
409 FM 1144
Karnes City, TX 78118

Secretary of Homeland Security Markwayne Mullins
2707 Martin Luther King Jr., Ave., SE
Washington, DC 20528-0485

U.S. Attorney General Todd Blanche
950 Pennsylvania Ave NW
Washington, DC 20530

The above respondents were also named in the CM/ECF habeas corpus filing with the Western District of Texas court.

/s/ Claudia I. Chavarria