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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PORTALES BAUTISTA, MARISOL AKA MARISOL BAUTISTA PORTALES Petitioner, v. BRUCE SCOTT, Warden of the Northwest ICE Processing Center; MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security Respondents.	CIVIL ACTION NO. 2:26-cv-02652 **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** **(CHANGED CIRCUMSTANCES: DEFECTIVE BOND HEARING AND CONTINUED UNLAWFUL DETENTION)**

I. INTRODUCTION

COMES NOW, Petitioner Marisol Portales Bautista ("Petitioner"), by and through undersigned counsel, and respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging her unconstitutional immigration detention arising from an abuse of discretion by an Immigration Judge ("IJ") at a bond hearing after this Court's prior grant of habeas relief.

This case therefore presents a straightforward question: whether the Government may continue to detain a noncitizen based on a bond determination that is **arbitrary, conclusory,**

reflective of an abuse of discretion, and devoid of any reasoned or individualized analysis and unsupported by the record. It may not.

In a prior habeas proceeding (Case no. 2:26-cv-00817-RSM), this Honorable Court correctly determined that Petitioner's detention violates due process and that Petitioner is entitled to habeas relief. On July 6, 2026, the Honorable Ricardo S Marinez ordered the Government to provide Petitioner with a bond hearing, stating "Continued detention under these circumstances, without a bond hearing, is disproportionate to the underlying offense that got Petitioner in this situation and violates due process."

The Government provided the bond hearing, but that proceeding did not provide meaningful process and it failed to correct the constitutional violations identified by this Court. The IJ issued a conclusory "no bond" determination by checking a box that stated: "Flight Risk" and "Conditional release is DENIED under any conditions set by ICE/DHS". This decision was unsupported by factual findings, legal reasoning, or any indication that the required statutory and constitutional standards were meaningfully applied.

The Government was given an opportunity to justify Petitioner's detention through a constitutionally adequate process and failed to do so. As a result, Petitioner's continued detention is unsupported by a lawful basis and is constitutionally deficient.

Petitioner has now been detained for more than eight months, her removal order is currently on appeal before the Board of Immigration Appeals ("BIA"), her family is needlessly suffering through significant health issues without her, and there is no end in sight to her confinement. The IJ's abuse of discretion—reflected in a conclusory and unsupported "no bond" determination—cannot sustain continued detention. Under these circumstances, release is the only adequate remedy.

II. JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner is in custody under the authority of the United States and challenges the legality of that custody. Jurisdiction is also proper under 28 U.S.C. § 1331 and the Due Process Clause of the Fifth Amendment.

Venue lies in the Western District of Washington because Petitioner is detained at the Northwest ICE Processing Center in Tacoma, Washington.

III. PARTIES

Petitioner is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Northwest ICE Processing Center. Respondent Bruce Scott is the Warden of NWIPC and Petitioner's immediate physical custodian. He is the proper respondent under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security.

IV. FACTUAL BACKGROUND

A. Immigration History

Petitioner is a native and citizen of Mexico who has been a lawful permanent resident (LPR) of the United States since July 19, 2011. Since obtaining LPR status, she has built her life in the United States, where she has worked, paid taxes, and established extensive ties to her community. She has resided in Florida for many years and has maintained a consistent employment history while supporting her family.

B. Family and Community Ties

Petitioner has deep family ties to the United States. She is the mother of three United States citizen children, aged approximately 14, 16 and 17, all of whom have spent their lives in this country. She is no longer with the children's father and has sole legal custody of her

children. She serves as the primary source of emotional, financial, and day-to-day support for her household.

Petitioner is also the primary caregiver for her husband, her children's step-father, who recently underwent multiple toe amputations due to serious medical complications. The medical records submitted to the Immigration Court document the significant nature of his condition and demonstrate that he requires ongoing assistance with mobility, daily activities, and recovery.

Before her detention, Petitioner provided that care while simultaneously supporting the family's household and raising their children. Her continued detention has left her medically vulnerable husband without the person primarily responsible for assisting him during his recovery. The hardship imposed by Petitioner's continued detention therefore extends well beyond Petitioner herself and directly affects the health and wellbeing of her spouse.

C. Emotional and Psychological Harm to Petitioner's Children

Petitioner's children have been profoundly affected by her prolonged detention. Her youngest child is especially struggling without her present. The separation has caused significant emotional and psychological hardship and they have been deprived of the daily care and stability provided by their mother while simultaneously coping with the serious medical condition of their step-father. Petitioner's continued detention therefore imposes extraordinary hardship upon innocent United States citizen children who rely upon her for emotional, financial, and parental support.

At Petitioner's bond hearing, substantial evidence was presented demonstrating the close relationship Petitioner maintains with her children and the central role she plays in their daily lives. Community members consistently describe Petitioner as a devoted, hands-on mother whose life revolves around caring for her children, ensuring their wellbeing, and providing a

stable home. Friends and coworkers uniformly explain that the children are closely bonded with their mother and desperately need her presence.

D. Criminal History and Immigration Detention

On August 6, 2025, Petitioner was convicted in Florida state court of three counts of welfare fraud. Importantly, the state court determined that incarceration was unnecessary and imposed a sentence of sixty months of probation rather than any term of imprisonment.

While reporting to her probation officer on October 24, 2025, Immigration and Customs Enforcement ("ICE") agents arrested Petitioner and placed her into immigration detention. DHS thereafter charged her as removable based upon those convictions. Petitioner has remained continuously detained ever since, despite the state court's determination that probation—not incarceration—was the appropriate sentence.

E. Pending BIA Appeal

Following removal proceedings, the IJ ordered Petitioner removed on February 10, 2026. Petitioner timely appealed that decision to the BIA, where her appeal remains pending.

F. Rehabilitation, Employment History, and Community Support

Petitioner has accepted responsibility for the conduct underlying her criminal convictions and fully complied with the sentence imposed by the Florida state court before ICE intervened. The state court determined that probation—not incarceration—was sufficient, reflecting that Petitioner's offenses did not warrant imprisonment. Prior to her detention, Petitioner maintained steady employment, worked to support her family, and consistently filed federal income tax returns. The bond record reflects substantial lawful employment and documented earnings, further demonstrating her long-term commitment to supporting her family through legitimate employment.

Petitioner has overwhelming support from family members, friends, coworkers, and members of her community. Numerous letters submitted on her behalf uniformly describe her as hardworking, honest, dependable, compassionate, and deeply devoted to her family. They describe her as an active church member, a caring mother, a reliable employee, and an individual who has consistently contributed positively to her community. Those who know Petitioner best uniformly express confidence that she will comply with all court requirements if released and emphasize that her family urgently needs her home to care for her husband and children.

G. This Court Previously Granted Habeas Relief

On July 6, 2026, this Court granted Petitioner's prior petition for a writ of habeas corpus after concluding that Petitioner's continued mandatory detention without an individualized custody determination violated due process. The Court recognized that Petitioner's detention had become constitutionally problematic and ordered that she receive a constitutionally adequate bond hearing before an IJ.

H. Post Habeas Grant Bond Hearing

On July 16, 2026, the Immigration Court conducted Petitioner's bond hearing. Through counsel, Petitioner presented extensive evidence demonstrating that she is neither a danger to the community nor a flight risk. The bond record included evidence of Petitioner's LPR status, approximately fifteen years of residence in the United States, stable employment history, federal income tax filings, substantial family ties, community support, rehabilitation, and her role as the primary caregiver for her children and husband, who is recovering from multiple toe amputations. Petitioner further submitted evidence that the Florida criminal court had determined incarceration was unnecessary, instead imposing a sentence of sixty months of probation. She also presented numerous letters from family members, employers, friends, and community

members attesting to her character, reliability, rehabilitation, and commitment to her family and community. Medical records documenting her husband's recent toe amputations and ongoing need for assistance were also submitted in support of her request for release.

Following the hearing, the IJ denied bond. The written custody order reflects that the IJ determined Petitioner should remain detained based on "Flight Risk," denied conditional release, and indicated that Petitioner's ability to pay had been considered. The order does not otherwise discuss the evidence presented at the hearing or set forth additional factual findings supporting the custody determination.

V. LEGAL STANDARD

Federal courts have jurisdiction under 28 U.S.C. § 2241 to review the legality of immigration detention. A writ of habeas corpus may be granted where a petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

The Supreme Court has confirmed that habeas corpus remains available to challenge the statutory and constitutional limits of immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

Courts routinely entertain renewed habeas challenges where continued detention renders previously lawful confinement unconstitutional. See *Barapind v. Reno*, 225 F.3d 1100, 1110–11 (9th Cir. 2000) (recognizing continued application of equitable principles in § 2241 cases).

Courts evaluating immigration detention must assess its reasonableness in light of current conditions, not merely its initial justification. See *Banda v. McAleenan*.

This Court has jurisdiction to review immigration custody determinations for legal error, including whether an IJ's bond decision was arbitrary, applied the wrong legal standard, or violated due process. See *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024).

VI. ARGUMENT

A. The Petition Is Properly Before the Court

This Petition arises from events occurring after this Court granted habeas relief and ordered the Government to provide a constitutionally adequate bond hearing with an IJ. That process has now occurred, and it failed.

Should Respondents argue that this Petition is barred as an abuse of the writ, that argument fails. Neither case law nor statutes expressly define what constitutes a second, successive, or subsequent habeas petition. *Barapind v. Reno*, 225 F.3d 1100, 1111-12 (9th Cir. 2000). Additionally, Petitioner could not have raised this claim previously because it arises directly from the IJ's post-habeas bond determination. See *McCleskey v. Zant*, 499 U.S. 467, 493–95 (1991). Because this Petition challenges the adequacy of that subsequent proceeding and the Government's failure to cure the constitutional violation identified by this Court, it presents a new and continuing injury.

Because this case arises from new and ongoing constitutional violations, the Petition is properly before this Court.

B. Exhaustion Is Not Required

Petitioner should not be required to pursue prudential exhaustion. The constitutional injury challenged in this case arose from the bond hearing ordered by this Court following its grant of habeas relief. This Petition therefore does not relitigate previously decided issues, nor does it seek ordinary appellate review of a discretionary bond determination. Rather, it challenges whether the hearing ordered to cure the constitutional violation previously identified by this Court actually satisfied due process.

Prudential exhaustion is not jurisdictional and may be excused where administrative remedies are inadequate, futile, or incapable of providing effective relief. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Even where exhaustion may otherwise be appropriate, courts recognize multiple exceptions, including where requiring exhaustion would cause undue prejudice, involve an unreasonable or indefinite timeframe, or where administrative remedies are ineffective or futile. *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992); *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 n.4 (9th Cir. 1981); see also *Laing*, 370 F.3d at 1000–01.

Courts in this District have repeatedly declined to require exhaustion where the claim involves a constitutional defect in the bond hearing itself. See *Soriano v. Hernandez*, No. 2:26-CV-00900-DGE, 2026 WL 969764, at *4 (W.D. Wash. Apr. 10, 2026) ("Where the issue is whether procedural due process was violated, the Court finds no reason to delay review in favor of allowing the BIA to possibly correct an error."); *W.T.M.*, 2026 WL 262583, at *3 (finding administrative exhaustion unwarranted where "the defect alleged by Petitioner was constitutional in nature, and it was unlikely that appeal to the BIA would permit the agency to correct a factual or evidentiary oversight by the IJ" (citation modified)); see also *Garcia Ortiz v. Henkey*, No. 1:26-cv-00043-BLW, 2026 WL 948275, at *3 (D. Idaho Apr. 7, 2026).

That reasoning applies with full force here. Petitioner challenges a constitutional defect in the very hearing ordered by this Court to cure an already-established due process violation. Specifically, Petitioner challenges the IJ's failure to provide a meaningful, individualized bond hearing, including the failure to meaningfully explain the basis for continued detention. Because the alleged violation is procedural and constitutional in nature, requiring Petitioner to pursue

administrative review would serve only to delay judicial intervention without any meaningful likelihood of relief.

Moreover, requiring exhaustion would not cure the constitutional defect identified here because the violation occurred at the hearing itself. Additional administrative review cannot retroactively supply the individualized analysis, consideration of alternatives, or reasoned explanation that was lacking when Petitioner's liberty was deprived. Due process requires a meaningful opportunity to be heard at the time detention is imposed—not months later through appellate proceedings. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Nor should Petitioner be required to pursue an administrative appeal simply to obtain, for the first time, a reasoned explanation for her continued detention. Due process requires meaningful procedures before a person may be deprived of liberty, not after the constitutional violation has occurred. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Consistent with that principle, *Martinez v. Clark* requires a meaningful and individualized custody determination supported by a contemporaneous record sufficient to permit meaningful judicial review. 124 F.4th 775, 786 (9th Cir. 2024). The availability of a future appeal does not excuse the absence of a meaningful explanation in the initial decision.

Finally, continued detention itself constitutes irreparable harm. Where the injury alleged is the unconstitutional deprivation of physical liberty, irreparable harm is inherent in the claim. See *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.") (quotation omitted). Petitioner therefore continues to suffer irreparable harm each day she remains detained pursuant to a constitutionally deficient custody determination.

Requiring exhaustion would serve only to prolong the very deprivation of liberty that this Court has already determined warrants constitutional scrutiny. Because administrative remedies are inadequate, futile, and incapable of curing the constitutional violation at issue, prudential exhaustion should be excused.

C. The July 16, 2026 Bond Hearing Did Not Provide the Meaningful Individualized Custody Determination Required by Due Process

This case does not concern ordinary review of a discretionary bond determination. Rather, it concerns whether the custody hearing conducted on July 16, 2026 cured the constitutional violation that prompted this Court to grant Petitioner's prior habeas petition. In granting relief, Judge Martinez concluded that Petitioner's continued detention had become constitutionally unreasonable after weighing the factors identified in *Martinez v. Clark*. The Court specifically found that Petitioner's detention had already exceeded eight months, her detention far exceeded the probationary sentence imposed for her underlying criminal convictions, her offenses resulted in no custodial sentence whatsoever, neither party had caused undue delay and although Petitioner's likelihood of ultimately receiving a final order of removal slightly favored the Government, the totality of the circumstances demonstrated that continued detention without an individualized custody hearing violated due process. Accordingly, the Court ordered that Petitioner receive a new bond hearing because continued detention under those circumstances was disproportionate to the offense giving rise to her detention.

Although the IJ conducted the hearing ordered by this Court, the hearing did not meaningfully address the constitutional concerns identified in Judge Martinez's decision. Rather than engaging in the individualized assessment contemplated by the Court's proportionality analysis, the IJ largely relied on Petitioner's fraud convictions, the existence of a final removal

order, and the pendency of further appellate review to conclude that Petitioner presented a flight risk. In doing so, the IJ failed to meaningfully evaluate the very considerations this Court had found constitutionally significant, including Petitioner's lengthy detention, the fact that the state court imposed only probation and no incarceration, her lawful permanent resident status, her extensive family ties, and the substantial evidence demonstrating that less restrictive alternatives could reasonably assure her appearance.

Considered together, the specific deficiencies discussed below demonstrate that the hearing failed to meaningfully consider this Court's constitutional concerns or remedy the due process violation that formed the basis for this Court's habeas grant, and therefore cannot provide a lawful basis for Petitioner's continued detention.

Courts have consistently recognized that custody determinations resting on conclusory findings, unsupported reasoning, or a failure to meaningfully consider the evidence constitute both an abuse of discretion and a violation of due process. See *Minango v. Bondi*, No. 2:26-cv-00235-ART-BNW, 2026 WL 1257028, at *4 (D. Nev. May 6, 2026); *Gimenez v. Hernandez*, No. 2:26-cv-00966-GJL, 2026 WL 1156075, at *6 (W.D. Wash. Apr. 29, 2026); *Miri v. Bondi*, No. 5:26-cv-00698-MEMF-MAR, 2026 WL 622302, at *10 (C.D. Cal. Mar. 5, 2026); *W.T.M. v. Scott*, 2026 WL 262583, at *4; *Segura Serrano v. Scott*, No. 2:26-cv-01268-LK, 2026 WL 1469639, at *7–8 (W.D. Wash. May 26, 2026); *Sanchez Henao v. Hernandez*, No. 2:26-cv-00707-LK, 2026 WL 1492714, at *7 (W.D. Wash. May 28, 2026).

D. The IJ's Bond Determination was Arbitrary and an Abuse of Discretion

The IJ's custody determination was arbitrary and constituted an abuse of discretion because both the bond hearing and the resulting written decision failed to provide the individualized, reasoned analysis required by due process.

1. The Bond Hearing

On July 16, 2026, Petitioner appeared before an IJ for the bond hearing ordered by this Court. The record demonstrates that the hearing and resulting custody determination failed to provide the meaningful, individualized process required by due process.

a. The IJ Improperly Penalized Petitioner for Exercising Her Statutory Right to Judicial Review

At the outset of the hearing, the IJ acknowledged that the District Court had ordered a bond hearing because of Petitioner's prolonged detention, stating that Petitioner's detention had become prolonged "as a result of her exercising her appeal rights." Rather than recognizing that Petitioner's exercise of her statutory right to appeal explained why due process required a custody determination, however, the IJ later returned to that same point before announcing her ruling, stating that Petitioner's immigration case was **"completed"** and that **"there is no purpose for release."** However, the opposite is true; Petitioner's case is not completed, her appeal remains pending before the BIA. If the BIA denies her appeal, Petitioner intends to seek review before the United States Court of Appeals for the Ninth Circuit. As courts have repeatedly recognized, these proceedings frequently require many months—and often years—to conclude. Petitioner could appeal the final order of removal, and the appeals process available to Petitioner may take up to two years or longer. See *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019). Thus, Petitioner's continued detention is not nearing its end; absent judicial intervention, it is likely to continue for a substantial additional period.

The IJ's statements that Petitioner's case was **"completed"** and **"there is no purpose for release"** suggests that she treated Petitioner's pursuit of appellate review as a reason to continue

detention rather than as the circumstance that required meaningful procedural protections. That reasoning is inconsistent with both the Court's prior order and the Fifth Amendment. Judge Martinez recognized that Petitioner's prolonged detention resulted from the ordinary progression of her immigration proceedings, not from any improper delay or dilatory conduct by Petitioner.

The IJ's statements further suggest that she improperly relied on the procedural posture and apparent merits of Petitioner's removal proceedings, rather than determining whether DHS had established that Petitioner presently posed a flight risk. Courts have consistently recognized that the merits of a noncitizen's applications for relief are not a proper basis for determining flight risk or justifying continued detention. See, e.g., *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011) (requiring that detention determinations be supported by evidence relevant to flight risk or dangerousness); *N.A. v. Warden*, Adelanto Det. Facility, No. 5:25-CV-03007-MBK, 2026 WL 1045196, at 8 (C.D. Cal. Apr. 15, 2026) (holding that the pendency or merits of claims for relief do not establish flight risk).

The purpose of the bond hearing was to determine whether DHS could establish, based on Petitioner's present circumstances, that continued detention remained justified—not to deny release based on a speculative outcome of Petitioner's removal proceedings or because Petitioner exercised the appellate rights Congress expressly provided.

The Ninth Circuit has repeatedly recognized that prolonged immigration detention commonly results from the ordinary course of administrative and judicial review, and that due process requires meaningful procedural safeguards when detention becomes prolonged. *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008). A noncitizen cannot be penalized for pursuing lawful appellate review. Conditioning continued detention on Petitioner's decision to seek review of her removal

order would impermissibly burden the exercise of rights expressly afforded by Congress and undermine the very purpose of the bond hearing ordered by this Court.

b. The IJ Failed to Consider Positive Equities (Guerra Violation)

In making release decisions under § 1226(a), the regulations provide that a noncitizen must demonstrate he or she does not pose a danger to property or persons, and that he or she is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); see also *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006).

According to *Matter of Guerra*, 24 I&N Dec. at 38; *Matter of R-A-V-P-*, 27 I&N Dec. at 805, the IJ must consider a range of evidence, some of which is objective, and some of which may require the Government to evaluate the credibility of the noncitizen and other witnesses. The factors the Government should consider are:

a) whether the noncitizen has a fixed address in the United States;
b) the noncitizen's length of residence in the United States;
c) 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;
d) the noncitizen's employment history;
e) the noncitizen's record of appearance in court;
f) the noncitizen's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses;
g) the noncitizen's history of immigration violations;
h) any attempts by the noncitizen to flee prosecution or otherwise escape from authorities; and,
i) the noncitizen's manner of entry to the United States.

Here, nearly every *Guerra* factor favored release: a fixed address in the United States; over 15 years of living in the United States; significant family ties, including three United States citizen children; a long history of working in the United States; no evidence that she has failed to appear for immigration proceedings; Petitioner does have a criminal history with non-violent conduct, however, the criminal court found that probation, not incarceration, was sufficient, and

she has evidence of rehabilitation and letters of family and community support; no evidence of immigration absconding; no history of violating immigration supervision; No attempts to flee, no absconding, no supervision violations, no aliases or false identities, she was arrested while reporting to her probation officer; Admitted lawfully as a lawful permanent resident in 2011.

The IJ did not discuss or consider any of Petitioner's positive equities at the hearing or in the denial order. This is a direct violation of the framework set forth in *Matter of Guerra*, 24 I&N Dec. at 40, that says IJs must consider the "totality of the circumstances," including family ties, length of residence, and community connections. A failure to consider relevant factors constitutes an abuse of discretion. *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011).

By declining to consider these factors, the IJ failed to apply the governing legal standard and instead based her decision on an incomplete assessment of the record that excluded critical evidence weighing in favor of release. Rather than conducting an individualized assessment of Petitioner's circumstances, the IJ relied on generalized concerns and unsupported conclusions. The record reflects no meaningful engagement with Petitioner's specific facts, including her longstanding residence, LPR status, serious family responsibilities, fixed address, community support, rehabilitation, numerous letters of support, and the fact that the Florida criminal court imposed only probation rather than incarceration, among other equities. These are precisely the types of individualized factors *Guerra* requires an IJ to consider. Here, the IJ did not.

A custody determination must be individualized. The failure to engage with the particular facts of Petitioner's case renders the decision legally deficient. Due process requires an "individualized determination" of whether detention is justified. *Hernandez v. Sessions*, 872 F.3d at 991. A decision that fails to meaningfully consider the individual's circumstances is constitutionally deficient. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

c. The IJ Failed to Hold DHS to Its Burden of Proving Flight Risk by Clear and Convincing Evidence

At the outset of the hearing, the IJ recognized that DHS bore the burden of proving by clear and convincing evidence that Petitioner's continued detention was justified based on flight risk. Although the IJ acknowledged the applicable burden, the record demonstrates that it was never meaningfully enforced.

The Government's presentation consisted primarily of four assertions: (1) Petitioner had been ordered removed; (2) she had been convicted of welfare fraud; (3) welfare fraud is an offense involving deceit; and (4) she intended to continue pursuing appellate review. DHS presented no evidence that Petitioner had ever absconded, failed to appear for immigration proceedings, violated conditions of supervision, escaped from custody, used aliases or false identities, committed immigration fraud, or otherwise demonstrated an unwillingness to comply with lawful orders. Nor did DHS identify any conduct suggesting that Petitioner would fail to appear if released subject to reasonable conditions.

Despite the absence of such evidence, the IJ denied release based on flight risk. Although she acknowledged during the hearing that DHS bore the burden of proof, neither her oral ruling nor her written custody order explains how the Government's evidence satisfied the clear-and-convincing standard. The written order contains no finding that DHS met its burden, no discussion of the evidence supporting that conclusion, and no analysis connecting the facts presented to the ultimate determination that Petitioner posed a flight risk. Instead, the order simply checks the box labeled "Flight Risk" and denies release.

Simply identifying the correct burden of proof at the beginning of a hearing does not satisfy due process if the Government is not actually required to meet that burden. A constitutionally adequate custody determination requires the IJ to evaluate the evidence under the governing standard and explain why that evidence establishes flight risk by clear and convincing evidence. Here, the record reflects no such analysis. Instead, the IJ announced the ultimate conclusion without identifying what evidence she found persuasive or explaining how DHS's limited presentation satisfied its constitutional burden. The failure to meaningfully apply the governing burden of proof renders the custody determination legally deficient.

d. The IJ Improperly Treated Petitioner's Criminal Convictions and Final Administrative Removal Order Pending Judicial Review as Substitutes for Evidence of Flight Risk

The IJ appeared to equate Petitioner's criminal convictions and the existence of a final administrative removal order with flight risk. At the hearing, DHS emphasized Petitioner's welfare fraud convictions, the fact that the Immigration Court proceedings had concluded, and Petitioner's continued pursuit of appellate review. The IJ ultimately relied on those same facts in concluding that Petitioner presented a flight risk.

Those facts, however, do not establish that Petitioner is likely to abscond. To the contrary, the record contains no evidence that Petitioner has ever failed to appear for court, violated probation, absconded from supervision, fled from authorities, ignored lawful orders, used aliases or fraudulent identities in immigration proceedings, or otherwise demonstrated that she would fail to comply with reasonable conditions of release. Due process requires an individualized assessment of Petitioner's present circumstances—not reliance upon generalized assumptions regarding individuals convicted of fraud. By substituting broad inferences for

evidence specific to Petitioner, the IJ failed to conduct the individualized custody determination required by the Fifth Amendment.

A criminal conviction—even one involving fraud—does not demonstrate that an individual will fail to appear or disregard release conditions. Likewise, the existence of a final administrative removal order does not relieve DHS of its obligation to prove, through individualized evidence, that a particular noncitizen presently poses a risk of nonappearance. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (requiring consideration of the totality of the circumstances); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804–05 (BIA 2020) (requiring an individualized custody determination based on the evidence presented).

If a criminal conviction and a final administrative removal order alone established flight risk, individualized custody determinations would become meaningless for every noncitizen pursuing judicial review. That is not the law. Due process requires DHS to prove by clear and convincing evidence that **this** Petitioner presents a present risk of flight based on her own conduct and circumstances, not merely on the existence of a removal order or criminal convictions. *Martinez v. Clark*, 124 F.4th 775; *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017); *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011).

e. The IJ Failed to Provide a Reasoned Explanation Connecting the Evidence to Her Flight-Risk Finding

A constitutionally adequate custody determination requires more than a conclusory oral finding that the Government satisfied its burden. Due process requires a reasoned explanation demonstrating what evidence the IJ relied upon, how that evidence was weighed, and why that evidence established by clear and convincing evidence that continued detention remained necessary.

That explanation is entirely absent here. Without a reasoned explanation, meaningful judicial review becomes impossible. This Court cannot determine whether the IJ actually weighed the evidence presented or merely adopted the Government's position. Such conclusory findings do not satisfy due process.

f. The IJ Failed to Conduct the Individualized Determination Required by Due Process

The hearing lasted approximately twenty minutes and forty-five seconds, and focused almost exclusively on Petitioner's criminal convictions, the existence of her removal order, her pending appeal, and her husband's immigration status. By contrast, the IJ devoted little meaningful attention to Petitioner's present circumstances, including her lawful permanent resident status, lengthy residence in the United States, sole custody of her three United States citizen children, fixed residence, employment history, husband's serious medical condition, community support, rehabilitation, and the state court's determination that incarceration was unnecessary.

Due process requires an individualized assessment of whether continued detention remains necessary at the time of the hearing. *Hernandez*, 872 F.3d at 991. Instead of evaluating Petitioner's present circumstances, the IJ treated Petitioner's past conviction and current procedural posture as effectively dispositive. That approach falls short of the meaningful individualized custody determination contemplated by this Court's prior habeas order.

g. The IJ Failed to Consider Less Restrictive Alternatives to Continued Detention

Counsel specifically requested Petitioner's release subject to a reasonable bond and any conditions the IJ deemed appropriate. The record established that Petitioner has a stable

residence, substantial family support, significant community ties, and compelling reasons to comply with all future proceedings. Nevertheless, the IJ denied release under any conditions without explaining why less restrictive alternatives would be inadequate. The written custody order simply states that "Conditional release is DENIED under any conditions set by ICE/DHS," without further analysis.

The IJ never explained why reporting requirements, electronic monitoring, bond, or any combination of supervision conditions would fail to reasonably assure Petitioner's appearance. This omission is particularly significant where this Court had already determined that Petitioner's prolonged detention raised serious constitutional concerns and ordered an individualized custody determination. Due process requires meaningful consideration of reasonable alternatives to continued incarceration, not their summary rejection.

h. The IJ Failed to Cure the Constitutional Violation Previously Identified by This Court

Ultimately, this case presents a straightforward question. Judge Martinez previously concluded that Petitioner's prolonged detention had become constitutionally unreasonable absent a meaningful individualized custody determination. The remedy was not detention for detention's sake, but a constitutionally adequate bond hearing at which DHS would bear the burden of justifying Petitioner's continued confinement.

Although such a hearing was conducted, the constitutional violation identified by this Court remains uncured. The IJ failed to meaningfully consider Petitioner's favorable equities, failed to require DHS to satisfy its burden through individualized evidence, relied upon generalized assumptions rather than specific facts, equated Petitioner's convictions and procedural posture with flight risk, failed to provide a reasoned explanation for her decision, failed to meaningfully consider less restrictive alternatives, and appeared to penalize Petitioner

for exercising her statutory right to appellate review. The resulting custody determination therefore did not provide the meaningful individualized process required by the Fifth Amendment and cannot furnish a lawful basis for Petitioner's continued detention.

2. Resulting Decision of the Bond Hearing

The IJ's bond determination fails at every level: it provides no reasoning, applies no identifiable legal standard, and disregards undisputed evidence demonstrating that Petitioner is not a danger or a flight risk. The IJ's decision was essentially a boilerplate, checked-box determination that reflects a predetermined outcome rather than a meaningful exercise of discretion.

At the conclusion of the hearing, the IJ issued the following written decision:

Order:
[X] ORDERED that the request for a change in custody status be denied.
Bond REMAINS AT NO BOND based on the following:
[X] Flight Risk
Additional Information:
[X] Conditional release is DENIED under any conditions set by ICE/DHS.
[X] Ability to pay considered.

This Court has jurisdiction to review immigration custody determinations for legal error, including whether an IJ properly concluded that a noncitizen presents a flight risk or danger to the community. See *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024).

Here, the IJ's bond determination was arbitrary, legally deficient, and constituted an abuse of discretion. This deficiency is not merely a lack of detail—it reflects a failure to make the required findings altogether. The written decision consists only of a checked-box form, with no factual findings, no legal analysis, and no explanation of the basis for the determination.

The IJ did not make independent findings as to flight risk. Instead, the IJ summarily concluded that Petitioner was a "Flight Risk" and that "Conditional release is DENIED under any conditions set by ICE/DHS." Significantly, unlike many custody orders entered after the burden is placed on the government, the IJ did not state that DHS had established flight risk by clear and convincing evidence. The written order contains no indication that the IJ actually applied the heightened burden of proof required by due process.

The omission is significant, not merely stylistic. In custody determinations where DHS bears the burden of proof, IJs commonly make an express finding that the Government has established danger or flight risk by clear and convincing evidence before denying release. Here, although the IJ acknowledged during the hearing that DHS bore the burden, the written decision contains no finding that DHS satisfied that burden and no analysis explaining why the evidence met the applicable standard. Instead, the order simply announces the ultimate conclusion that Petitioner is a "Flight Risk," without identifying the facts relied upon or explaining how those facts establish flight risk under the governing clear-and-convincing standard. The absence of any articulated burden analysis further demonstrates that the decision cannot be meaningfully reviewed and does not reflect the reasoned, individualized custody determination required by due process.

A determination that the Petitioner is a "Flight Risk" is not a substitute for a reasoned decision. A conclusion of this magnitude—denying release under any circumstances—requires a reasoned explanation grounded in the record. None was provided. A valid custody determination requires a reasoned application of law to fact, and a decision consisting of a checked box does not meet that standard. See *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).

Because of the liberty interest, there are seldom circumstances where no combination of conditions, including bond, could mitigate any flight risk. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Detention without the possibility of posting bond for flight risk is, as a matter of constitutional law, rare.

Civil detention is permissible only where the Government demonstrates, by clear and convincing evidence, that a noncitizen presently poses a genuine and individualized risk of failing to appear for future proceedings. See *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024); *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011). Such determinations must be grounded in current, individualized evidence—not generalized assumptions, speculation, or the mere existence of prior criminal convictions or a final order of removal. See *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Where detention is imposed without an individualized evidentiary basis demonstrating that continued confinement is necessary to reasonably ensure the noncitizen's appearance, detention ceases to serve a legitimate regulatory purpose and instead becomes punitive in violation of due process. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

Here, the IJ's conclusion that no amount of bond or conditions could mitigate risk is irreconcilable with these factors and unsupported by the record. Petitioner's positive equities overwhelmingly support release and directly contradict the IJ's conclusion that no conditions could mitigate risk.

E. Petitioner's Humanitarian Equities and Family Hardship Further Underscore The Severity of The Liberty Deprivation

Petitioner's continued detention imposes substantial and ongoing hardship on her family, especially her husband and children, further underscoring the severity of the liberty deprivation at issue. Petitioner is a Lawful Permanent Resident ("LPR") who has lived in the United States for approximately fifteen years and has built deep family and community ties. She is the mother of three United States citizen children, has sole legal custody of them, and serves as the primary source of emotional, financial, and day-to-day support for her household. Her husband is recovering from multiple toe amputations and depends upon Petitioner's assistance with his daily care and recovery. In her absence, her family has been forced to shoulder responsibilities that Petitioner previously fulfilled, placing extraordinary strain on the household and disrupting the stability that she has long provided.

Petitioner's continued detention is causing severe hardship to her family. The bond materials demonstrate that her husband's ongoing recovery has been made substantially more difficult without Petitioner's assistance, while her youngest son has been deprived of his mother's daily presence, care, guidance, and emotional support during a critical stage of his childhood. He is struggling tremendously without her. These hardships are not speculative; they are immediate, continuing, and well documented in the evidence submitted to the Immigration Court. They further demonstrate that Petitioner's prolonged detention inflicts serious consequences not only upon her, but upon the United States citizen family members who depend on her every day.

This evidence further underscores the critical role Petitioner plays in her family and the substantial hardship caused by her continued detention. Courts have recognized that the impact of detention on close family relationships and dependent relatives is relevant in evaluating whether continued civil detention violates due process. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (requiring consideration of the private interests affected by government action); see

also *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1107–08 (W.D. Wash. 2019) (considering the totality of circumstances and humanitarian factors in evaluating prolonged detention). Here, the impact of detention extends well beyond Petitioner herself and imposes substantial harm on dependent family members.

The IJ's oral or written decision contains no meaningful discussion of these factors. The failure to consider Petitioner's substantial equities and the significant hardship imposed on her family further confirms that the bond determination was not the result of a reasoned, individualized assessment, but rather a conclusory and deficient decision.

F. Petitioner's Continued Detention Is No Longer Constitutionally Permissible

Civil immigration detention is constitutional only so long as it remains reasonably related to its regulatory purposes and is supported by constitutionally adequate procedures. *Zadvydas v. Davis*, 533 U.S. 678, 690–92 (2001). The Government may detain a noncitizen only to prevent flight or protect the community, and due process requires meaningful procedural safeguards to ensure continued detention remains justified. *Id.*; *Demore v. Kim*, 538 U.S. 510, 527 (2003); *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024).

Petitioner has now been detained in ICE custody for more than eight months, the appeal of her removal proceedings remain pending with the BIA, and there is no defined endpoint to her civil confinement. More importantly, the only custody determination purporting to justify that detention is constitutionally deficient. As set forth above, the IJ failed to meaningfully consider the evidence presented and issued a conclusory decision unsupported by reasoned findings or the record.

Because the July 16, 2026 custody determination cannot constitutionally support Petitioner's continued detention, Respondents presently lack a lawful basis to continue depriving

her of her liberty. Continued detention under these circumstances is no longer reasonably related to the Government's regulatory interests and instead has become arbitrary and constitutionally unreasonable. See *Zadvydas*, 533 U.S. at 690–92.

Accordingly, Petitioner's continued detention violates the Due Process Clause, and immediate release is the only adequate remedy.

G. The Government Failed to Cure the Constitutional Violation, Making Immediate Release the Only Adequate Remedy

This Court previously determined that Petitioner's detention violated due process and afforded Respondents an opportunity to cure that violation by providing a constitutionally adequate custody hearing. They failed to do so. Although an IJ conducted the hearing ordered by this Court, the resulting custody determination failed to satisfy the requirements of due process because the IJ did not conduct the meaningful, individualized, and reasoned custody determination that the Fifth Amendment requires, and instead issued a conclusory flight-risk determination unsupported by factual findings or a reasoned explanation. A hearing that lacks the procedural safeguards necessary to ensure a fair and reasoned decision does not cure a constitutional violation. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Likewise, an unexplained decision cannot provide a lawful basis for continued detention. See *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Having already been afforded an opportunity to cure the constitutional violation, Respondents are not entitled to another. See *Brambila Sanchez v. Scott*, No. 2:26-cv-00948-RAJ (W.D. Wash. May 15, 2026) (holding that a constitutionally deficient custody determination did not provide an independent basis for continued detention and ordering release); *Saparali Uulu v.*

Scott, No. 2:26-cv-01631-TL (W.D. Wash. July 10, 2026) (ordering immediate release after concluding that the IJ's custody determination was unsupported by the record and failed to provide a lawful basis for continued detention); *Escalante Perez v. Hernandez*, No. 2:26-cv-00956-TSZ (W.D. Wash. Apr. 14, 2026) (ordering release where the Government failed to establish a lawful basis for continued detention following a deficient custody determination). As the Supreme Court has recognized, "the typical remedy for unlawful detention is . . . release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

VII. REQUEST FOR RELIEF

Petitioner respectfully requests that this Court:

1. GRANT this Petition for Writ of Habeas Corpus;
2. ORDER Respondents to immediately release Petitioner from custody within 24 hours of the Court's order under conditions of supervision;
3. In the alternative, ORDER Respondents to immediately release Petitioner from custody within 24 hours of the Court's order under conditions of supervision;
4. Retain jurisdiction to ensure compliance with the Court's Order and to resolve any disputes concerning its implementation.

VIII. CONCLUSION

This case presents a simple question: Can the Government continue to detain a noncitizen based on a bond determination that is arbitrary, conclusory, and unsupported by any reasoned or individualized analysis? No, it may not.

This Court has already determined that Petitioner's detention violated due process and afforded the Government a full and fair opportunity to cure that violation. The IJ bond hearing failed to justify Petitioner's detention and exacerbated the Government's violation. The custody

hearing as well as the IJ's conclusory "no bond" determination, devoid of reasoning and unsupported by the record, reflects an abuse of discretion and fails to provide any lawful basis for continued detention. In such circumstances, release—not further process—is required. The same result is required here.

Accordingly, the Petition should be granted, and Petitioner should be ordered immediately released.

IX. SIGNATURE AND CERTIFICATION

The undersigned counsel certifies that she represents the Petitioner and that this Petition is filed on Petitioner's behalf pursuant to 28 U.S.C. § 2241.

Respectfully Submitted this 27th day of July 2026.

/s/Jennifer Lesmez

Jennifer Lesmez, WSBA #34547
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Jennifer Lesmez, certify that on this 27th day of July 2026, I served true and correct copy of the **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 (CHANGED CIRCUMSTANCES: DEFECTIVE BOND HEARING AND CONTINUED UNLAWFUL DETENTION)** upon the following Respondents by electronic service as permitted:

BRUCE SCOTT
Warden, Northwest ICE Processing Center
1623 East J Street
Tacoma, WA 98421

MARKWAYNE MULLIN
Secretary, U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Required Service on the United States

UNITED STATES ATTORNEY'S OFFICE
USAWAW.ImmigrationHabeasService@usdoj.gov
(Via email)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of July 2026.

/s/Jennifer Lesmez

Jennifer Lesmez, WSBA #34547
Attorney for Petitioner