

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

Antonio AGUIRRE VILLA, et al.,)	
Eucario BARRERA ROSAS)	
)	
Petitioner,)	
)	
vs.)	CASE NO.:
)	5:25-cv-00117-LGB-BWC
)	
TONY NORMAND, <i>in his official capacity</i>)	Consolidated case:
<i>As Warden of Folkston Ice Processing Center; and</i>)	5:25-cv-00089-LGW-BWC
GEORGE STERLING, <i>Field Office Director for</i>)	
<i>ICE Atlanta Field Office Atlanta Field Office; and</i>)	
TODD LYONS, <i>in his official capacity as Acting</i>)	
<i>Director of Immigration and Customs Enforcement; and</i>)	
KRISTI NOEM, <i>Secretary of Homeland Security; and</i>)	
PAMELA BONDI, <i>U.S. Attorney General.</i>)	
)	
Respondents.)	
_____)	

**PETITIONER’S MOTION TO ENFORCE COURT ORDER, ECF. 84
AS TO EUCARIO BARRERA ROSAS, 5:25-cv-00117
AND TO SHOW CAUSE RE CONTEMPT OF COURT**

COMES NOW Petitioner, Eucario Barrera Rosas, by and through undersigned counsel, respectfully moves this Court for an order enforcing its November 14, 2025 Order (ECF No. 84).

While the government's power over immigration is plenary, it remains subject to significant constitutional limitations. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law, and "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This protection applies to all persons within the United States, including noncitizens, regardless of their legal status. Accordingly, "[i]n the context of immigration detention, it is well-settled that due

process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Castellar v. McAleenan*, 388 F. Supp. 3d 1218, 1227 (S.D. Cal. 2019) (internal quotation marks and citation omitted).

This Court's November 14, 2025 Order sought to vindicate that very interest by affirming Petitioner's right to the procedural process owed to him under 8 U.S.C. § 1226(a). *See* ECF No. 84 at 17, n.4 ("Section 1226(a) applies to the consolidated Petitioners and, therefore, those individuals are entitled to bond hearings."); *id.* at 23 ("Given the core legal issue in all the consolidated cases, relief for all Petitioners is warranted."); *id.* at 24 ("Respondents shall provide that Petitioner a bond hearing, as required by § 1226(a). . . ."); *see also id.* at 27 ("The effect of this ruling is that no Petitioner named in these consolidated cases shall be subject to § 1225 mandatory detention.").

Respondents flouted this Court's mandate. Rather than providing a hearing with the meaningful procedural protections guaranteed by statute and the Constitution, Respondents conducted a bond hearing for Petitioner by stealth. This proceeding was fundamentally defective, held without proper notice to Petitioner's counsel of record and denying Petitioner the aid of his counsel to refute the government's erroneous legal contentions. (See Burns Decl. at ¶¶ 11–15). The Immigration Judge's failure to ensure Petitioner could contact his attorney or make a knowing and voluntary waiver of counsel rendered the hearing a procedural nullity and the resulting detention invalid as a matter of law.

Because the hearing provided was so deficient that it failed to constitute the hearing required by this Court's Order and by law, Respondents remain in violation of their obligations. Thus, Petitioner moves the Court to find Respondents in violation of the November 14, 2025

Order, and to direct Petitioner's immediate release as the only adequate remedy for this ongoing constitutional violation, in accordance with its prior Order and the controlling law of this Circuit.

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 14, 2025, this Court issued an Order in this consolidated action granting relief to all petitioners in the consolidated petitions. Order at 2. The Court granted relief to two categories of petitioners: those who were previously granted bond and those who were detained without a bond hearing. *Id.* at 24.

For those petitioners previously granted bond, the Court directed Respondents to "release that Petitioner subject to the bond conditions previously set by the IJ within three (3) days of this Order." *Id.* For those who had not had a bond hearing, the Court directed Respondents to "provide that Petitioner a bond hearing, as required by § 1226(a) within three (3) days." Three days after the Court's Order was November 17, 2025.

Upon information and belief, the Executive Office of Immigration Review (EOIR) scheduled all petitioners who were detained without a bond for a bond hearing on November 17, 2025. However, as Petitioner's counsel, Matthew Elliot Burns, who is representing Petitioner in his removal proceedings, outlines in his attached declaration, the bond hearing was invalid and a violation of both this Court's order and Petitioner's due process rights. Exhibit 1, Declaration of Counsel, Matthew Elliot Burns (Burns Decl.).

Specifically, EOIR failed to provide proper notice of this hearing to Petitioner's counsel, denied Petitioner the ability to have his attorney of record present at the hearing, and failed to allow Petitioner any opportunity to respond to the government counsel's arguments. *Id.* First, EOIR only issued the notice of the hearing only to Petitioner but not his counsel of record. *Id.* at ¶ 7-8; Exhibit 2 – EOIR Notice of Custody Redetermination Hearing In Immigration Proceedings.

Second, Petitioner did not receive the notice before his hearing as EOIR issued the notice the same day as the hearing itself and thus he had no time to prepare. *Id.* Third, EOIR failed to notify Petitioner's counsel about the scheduled hearing despite the fact that Mr. Burns had entered his appearance with EOIR ninety-five (95) days prior to November 17, 2025, and had appeared with Petitioner on at least two previous occasions before the same immigration court. *Id.* at ¶¶ 7, 10. Fourth, as Mr. Burns outlines in his declaration based on his review of the official audio recording of the November 17, 2025, bond hearing, EOIR did not provide the Petitioner an opportunity to contact his attorney of record or to withdraw his request for bond until such time as his attorney of record could appear. *Id.* at ¶¶ 11-12. Thus, Petitioner was deprived of his right to counsel during the November 17, 2025, hearing. *See id.* at ¶ 13.

Next, EOIR did not provide Petitioner any opportunity to respond to the arguments raised by the Department of Homeland Security ("DHS") counsel during the hearing. *Id.* at ¶ 14. At the hearing, DHS counsel erroneously asserted that the Petitioner's December 10, 1993, conviction for criminal possession of a forged instrument in the third degree under New York Penal Law § 170.20 was a crime involving moral turpitude under 8 U.S.C. § 1182(a)(2)(A) which rendered him statutorily ineligible for bond under 8 U.S.C. § 1226(a). *Id.* at ¶ 15. Not only did DHS fail to provide any evidence of such conviction or legal analysis to support this assertion, but the assertion was wrong. As Petitioner's counsel would have explained if he had been notified of the hearing, even if convicted, Petitioner's conviction under New York Penal Law § 170.20 is not a crime involving moral turpitude (CIMT), as it rests squarely in the petty offense exception under 8 U.S.C. § 1182(a)(2)(A)(ii)(II). *Id.* at ¶ 15, n.1. Therefore, Petitioner is eligible for bond under 8 U.S.C. § 1226. The immigration judge clearly erred in unilaterally denying Petitioner's request for bond primarily based on DHS's incorrect assertion.

Moreover, even had the offense had been one for CIMT and would not have fallen within the petty offense exception, it would not preclude a bond under 8 U.S.C. § 1226(a) since it is a one and only offense for Petitioner, it did not involve any violence or danger to the public, and it occurred over 22 years ago.

Once Mr. Burns became aware of this injustice, Petitioner immediately filed a motion to reconsider his bond denial with EOIR on December 2, 2025. *Id.* at ¶ 19. This motion remains pending and Petitioner continues to suffer a deprivation of his liberty with each passing day. These ongoing violations of the Court's Order and Petitioner's due process rights warrant this Court's immediate intervention.

II. PETITIONER WAS ENTITLED TO COUNSEL DURING HIS BOND HEARING

A. Respondents Flouted This Court's Order by Staging a Procedurally Void Hearing.

Bond proceedings are 'separate and apart from, and shall form no part of, any ... removal hearing or proceeding.' 8 C.F.R. § 3.19(d); The hearing Respondents conducted lacked the basic procedural safeguards necessary to be considered a valid bond hearing, rendering it a nullity and a violation of this Court's mandate.

B. The Denial of Counsel Is a Structural Error That Vitiates the Hearing

The INA not only grants the right to counsel but also a 'reasonable opportunity to examine the evidence against the alien, [and] to present evidence on the alien's own behalf.' 8 U.S.C. § 1229a(b)(4)(B). Without counsel, Petitioner was denied any meaningful opportunity to rebut DHS's erroneous legal assertions regarding his 1993 conviction, demonstrating the concrete prejudice that flows from this structural error.

8 U.S.C. § 1362 and 8 U.S.C. § 1229a(b)(4)(A) guarantee every noncitizen the right to be represented by counsel at no expense to the government in removal and bond proceedings. In the title “Right to counsel,” 8 U.S.C. § 1362 states:

“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”

See also 8 U.S.C. § 1229a(b)(4)(A) (“the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings”).

This right is reinforced by regulations at 8 C.F.R. § 1003.17¹ outlining the process for an entry of appearance, and at 8 C.F.R. §§ 292.5² & 1292.5 discussing service upon and action by attorney or representative of record. Similarly, EOIR’s Immigration Court Practice Manual (ICPM) at Chapter 2.1, “Representation and Appearances Generally” (a) states that “[a] respondent may be represented by a practitioner of their choosing, at no cost to the government.” And (b)

¹ 8 C.F.R. § 1003.7(a)(2) provides that:

A practitioner who enters an appearance using Form EOIR-28 is the practitioner of record and must appear in immigration court on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, consistent with 8 C.F.R. 1292.5. **Filing a Form EOIR-28 provides the practitioner with access to the record of proceedings during the course of proceedings. A respondent shall be considered represented for the proceedings in which an EOIR-28 has been filed.**

² 8 C.F.R. § 292.5 provides that:

(a) **Representative capacity.** Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

(b) **Right to representation.** Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs. Provided, that nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.

states that “A properly filed Form EOIR-28 provides a practitioner with access to the record of proceedings during the course of proceedings. A respondent is considered to be represented for the proceeding in which a Form EOIR-28 has been properly filed and accepted.” See <https://www.justice.gov/eoir/reference-materials/ic/chapter-2/1> (last visited December 10, 2025); see also *id.* at Chapter 2.3 “Attorneys,” and Chapter 9.3(e)(2) “Bond Proceedings” (In a bond hearing, the alien may be represented by a practitioner of record at no expense to the government).

Moreover, 8 C.F.R. § 1240.10(a)(1) requires immigration judges to inform respondents of their right to representation by counsel of their choice, at no expense to the government. 8 C.F.R. § 1240.10(a)(1) provides, with respect to removal proceedings under Chapter V, Subchapter B, Subpart A of Title 8, requires the IJ to advise the noncitizen of this right and to require the noncitizen to state on the record whether they desire representation:

“In a removal proceeding, the immigration judge **shall: (1) Advise the respondent of his or her right to representation, at no expense to the government, by counsel of his or her own choice authorized to practice in the proceedings and require the respondent to state then and there whether he or she desires representation.**” [emphasis added].

Thus, an immigration judge has an independent and affirmative obligation to advise every noncitizen of their right to be represented by counsel **at each stage of immigration proceedings, at each hearing, including bond hearings. This duty exists regardless of any prior advisals by ICE or an IJ or any previous indication by the noncitizen that they did not wish to be represented.** The IJ must inform the noncitizen, on the record, of the right to counsel at no expense to the government, advise of the availability of pro bono legal services, and confirm whether the noncitizen desires representation. Critically, the IJ must ensure that any waiver of the right to counsel is made **knowingly, voluntarily and affirmatively, and must obtain an express**

acknowledgment or waiver before proceeding. This obligation applies equally to bond hearings as to merits hearings.

Several federal appellate courts have stated that a noncitizen's silence on the record (whether he wishes to have an attorney or not) does not constitute a waiver. **Such waiver must be explicitly waived:** "In order for a waiver to be valid, an IJ must generally: (1) **inquire specifically as to whether petitioner wishes to continue without a lawyer; and (2) receive a knowing and voluntary affirmative response.**" *See Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004) (emphasis added); *see also Arrey v. Barr*, 916 F. 3d 1149, 1157 (9th Cir. 2019) (even though the IJ in *Arrey* repeatedly asked her if she would like to continue without her lawyer, *Arrey* never gave her **knowing and voluntary assent**). The First Circuit also held that "[t]he statutory right to counsel is a fundamental procedural protection worthy of particular vigilance." *See Hernandez Lara v. Barr*, 962 F.3d 45, 54 (1st Cir. 2020). In that case, *Lara* was detained, spoke no English and made efforts to secure legal representation for her hearing, requested a continuance from the IJ to secure an attorney, was denied and ordered removed. The court held: "the IJ, by denying this request, failed to "meaningfully effectuate" the statutory right to counsel." *Id.*, at 56.

In light of the statutory and regulatory provisions guaranteeing a noncitizen's right to counsel at their own expense, Petitioner should have been expressly advised of this right at the outset of the bond proceeding—before any testimony was taken. This advisal was especially critical because Petitioner's removal attorney Burns had entered an appearance (Form E-28) with the immigration court 95 days earlier and had previously appeared in two bond hearings for Petitioners. Furthermore, the IJ was aware that Petitioner had a pending federal action challenging his detention, in which he was represented by counsel. Even if the IJ was uncertain about Petitioner's representation in federal or immigration court, Petitioner told EOIR during the hearing

that he had an attorney helping him with his removal proceedings. *See* Burns Decl. at ¶ 10. Despite this clear indication, it appears that EOIR failed to pause the hearing to clarify Petitioner's representation status, inquire whether he wished to contact his attorneys, or offer to continue the hearing to allow counsel to participate. *See id.* at ¶¶ 11-13. Instead, EOIR ignored Petitioner's statement and proceeded as if he were unrepresented, compounding the initial failure to provide the required advisal at the start of the hearing. Compounding this problem, Petitioner's counsel was never notified of the hearing in advance nor thereafter. Nor was he contacted during the hearing once it became apparent that Petitioner was in fact represented. This disregard for both the statutory right to counsel and the Petitioner's explicit reference to legal representation underscores a fundamental procedural defect in the bond hearing.

The Board of Immigration Appeals (BIA) has held in a precedential decision binding on all IJ's that denial of the right to counsel is a structural error that does not require a showing of prejudice for relief. *See Matter of C-B-*, 25 I. & N. Dec. 888, 889 (BIA 2012). The BIA stated that for a denial of the statutory right to counsel (as opposed to the denial of a continuance unrelated to the statutory right to counsel), a petitioner may not even need to show prejudice in order to have such decision overturned. The BIA held that in order to meaningfully effectuate the statutory and regulatory privilege of legal representation where it has not been expressly waived by a respondent, an Immigration Judge must grant a reasonable and realistic period of time to provide a fair opportunity for the respondent to seek, speak with, and retain counsel. *Id.* at 889. Further, the BIA has held that, where the right to counsel is denied or not knowingly and voluntarily waived, **prejudice is presumed** and relief is required. *See Matter of C-B-*, 25 I. & N. Dec. 888, 889 (BIA 2012).

The Fourth Circuit has held that immigration judges have an affirmative duty to advise noncitizens of their right to counsel at each stage, including bond hearings, and to ensure that any waiver is knowing and voluntary. *See Quintero v. Garland*, 998 F.3d 612, 627 (4th Cir. 2021). The Fourth Circuit likewise recognizes that the absence of counsel for a pro se noncitizen triggers heightened procedural protections and a duty to develop the record. *Id.* The government cannot meet its burden to show harmlessness in the face of this structural error. In *Quintero*, the 4th Circuit held that immigration judges have a heightened duty to develop the record when an unrepresented noncitizen appears before them, in order to protect the noncitizen's rights:

“That being said, we wholly agree with our sister circuits that, in light of the significant challenges pro se individuals in removal proceedings face, such individuals have a particularly strong need for procedural protections, without which they would not be able to “receive[] a meaningful hearing.” *Rusu*, 296 F.3d at 321 n.7. Accordingly, we hold that immigration judges’ duty to fully develop the record—while applicable in all cases—becomes especially crucial in cases involving unrepresented noncitizens.” ...
“Accordingly, we hold that immigration judges’ duty to fully develop the record—while applicable in all cases—becomes especially crucial in cases involving unrepresented noncitizens. Other circuits, the Attorney General, and the Board of Immigration Appeals alike have emphasized the importance of this duty in the pro se context, citing three main rationales: (1) the abstruse nature of immigration law; 15 (2) the substantial disadvantages faced by uncounseled noncitizens generally due to factors such as a lack of English proficiency and relevant legal knowledge; and (3) the gravity of the interests at stake—especially for individuals seeking protection from persecution or torture.”

Quintero v. Garland, 998 F.3d 612, 627 (4th Cir. 2021). Thus, Respondents’ failure to ensure Petitioner’s right to counsel at this critical bond hearing stage violated both the governing regulations and fundamental principles of due process, as well as this Court’s order, rendering the bond hearing—and any resulting detention—procedurally defective and invalid.

Overall, Respondents deprivation of Petitioner’s entitlement to counsel, especially when he told EOIR that he had counsel and his counsel had a Form EOIR-28 on file (*see Burns Decl.* at

¶¶ 4, 7-14), and failure to obtain an express acknowledgment or waiver before proceeding without his counsel, is a clear violation of federal statutes, regulations, and EOIR's ICPM. Respondents *denied* Petitioner his right to counsel, which directly violates existing immigration laws, regulations and practice. 8 C.F.R. § 292.5(b); EOIR § 2.3(a); *Soniregun v. I.N.S.*, No. 97-2060, 1998 WL 736649, *2 (4th Cir. Oct. 19, 1998) (citing to 8 C.F.R. § 292.5(a), which requires “notice to be served on attorney, if alien is represented”).

C. This Court Has Jurisdiction and Should Not Defer to Administrative Remedies.

Respondents may argue that this Court does not have jurisdiction to review the immigration judge's hearing. Any jurisdictional bar provision, however, only bars review of the Attorney General's *discretionary* judgments; it does not preclude constitutional challenges to the detention itself. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000). Petitioner is challenging the fundamental procedural fairness of his hearing—a core constitutional question.

Furthermore, Petitioner is not required to exhaust his administrative remedies by waiting for EOIR to rule on his motion to reconsider. Exhaustion is not required where, as here, there is a substantial constitutional question, the petitioner faces irreparable harm from continued detention, and administrative appeal would be futile. *See* ECF 1 Complaint and authorities therein. Forcing Petitioner to wait for the very agency that violated his rights to remedy the situation is the definition of futility and does not vindicate his right to liberty.

D. Respondents Should Be Ordered to Show Cause Why They Should Not Be Held in Contempt.

A party may be held in civil contempt for failing to comply with a court order if “(1) a valid order of the court existed; (2) the defendant had knowledge of the order; and (3) the defendant

disobeyed the order.” This Court’s November 14, 2025 Order was clear and unambiguous in its mandate that Respondents provide Petitioner with a bond hearing under § 1226(a). Respondents had knowledge of this Order and, by conducting a procedurally void hearing that deprived Petitioner of his right to counsel, they have disobeyed it. Therefore the hearing was not compliant with § 1226(a). Their failure to comply has caused and continues to cause Petitioner irreparable harm through his continued unlawful detention, warranting an order to show cause.

III. THE ONLY ADQUATE REMEDY IS IMMEDIATE RELEASE

Because Respondents unlawfully violated this Court’s Order by staging a constitutionally and procedurally defective bond hearing, Petitioner’s continued detention is illegal. This Court’s intervention is of the utmost urgency. Each day of confinement causes irreparable harm, including separation from his U.S. citizen children, and frustrates the statutory scheme this Court sought to uphold. Given the flagrant disregard for this Court’s Order and the structural constitutional defects that rendered the hearing void, the only adequate remedy is immediate release.

Because Respondents unlawfully violated this Court’s Order, performing constitutionally, legally and procedurally defective bond hearing that resulted in Petitioner’s continued wrongful detention, this Court’s intervention is of the utmost urgency. As an important note, upon information and belief, he is the only Petitioner out of the initial group of the consolidated cases that was denied bond that day. All the other petitioners were granted bonds and released. There is no remedy at law, without this Court’s immediate intervention, that can adequately compensate Petitioner for the consequences of his continued unlawful detention, including separation from his wife and family which includes U.S. citizen children, deterioration of his mental health, loss of employment eligibility, and interference with his ability to prepare and present a request for relief

from removal with the Immigration Court, and the failure to ensure he is afforded rightful due process, as this Court expressly required of Respondents. Each day of confinement causes irreparable harm, deprives him of liberty in violation of the Constitution, and frustrates the statutory scheme that entrusts arrest and detention of noncitizens.

IV. PRAYER FOR RELIEF

WHEREFORE, Petitioner Eucario Barrera Rosas respectfully requests that this Court issue an order:

1. **GRANTING** the Motion to Enforce;
2. **FINDING** that Respondents are in violation of the Court's November 14, 2025 Order;
3. **ORDERING** Respondents to immediately release Petitioner from custody;
4. **IN THE ALTERNATIVE** to immediate release, ordering Respondents to provide Petitioner with a new, constitutionally-compliant bond hearing within 24 hours before a different Immigration Judge, at which the government must prove by clear and convincing evidence that Petitioner's detention is necessary;
5. **ORDERING** Respondents to show cause, within a time set by the Court, why they should not be held in civil contempt for their failure to comply with the Court's November 14, 2025 Order; and
6. **GRANTING** Petitioner attorney's fees expended in this Motion to Enforce.

Respectfully submitted this 11th day of December, 2025.

/s/ Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on December 11, 2025, I electronically filed the foregoing **document** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

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