

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

G.F.F.,

Petitioner,

- against -

LADEON FRANCIS, New York Field Office
Director for U.S. Immigration & Customs
Enforcement, *et al.*,

Respondents.

No. 25 Civ. 7368 (JGK)

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION
TO PETITIONER'S MOTION TO ENFORCE THE COURT'S MEMORANDUM
OPINION AND ORDER**

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The Government respectfully submits this memorandum of law in opposition to petitioner G.F.F.'s motion, ECF Nos. 18-19 & 22, to enforce the Court's November 10, 2025, Memorandum Opinion and Order, ECF No. 17.

PRELIMINARY STATEMENT

Petitioner G.F.F. is a Venezuelan national without lawful status in the United States. He is subject to an order of removal that is currently on appeal and has been in immigration detention since December 2024. On November 10, 2025, this Court ordered the Government to either release G.F.F. or provide him with a bond hearing within seven days at which (1) the Government bears the burden of proving by clear and convincing evidence that G.F.F. is a risk of flight or a danger to the community, and (2) the immigration judge ("IJ") considers the availability of alternative conditions of release and, in determining the amount of any bond, G.F.F.'s ability to pay. Three days later, on November 13, 2025, the Government provided G.F.F. with a bond hearing in accordance with these instructions. The IJ found that the Government failed to establish that G.F.F. was a danger. The IJ nevertheless denied bond after determining that the Government had met its burden of showing by clear and convincing evidence that G.F.F. was a flight risk and there were insufficient alternative safeguards to ensure his appearance.

G.F.F. now argues that the November 13, 2025 bond hearing failed to comply with the Court's order. That assertion is belied by the record, which shows that the Government bore the burden of proof at the hearing and submitted significant evidence supporting the finding that Petitioner was a flight risk, and that the IJ considered alternatives to detention, as required. G.F.F.'s motion should therefore be denied.

FACTUAL BACKGROUND

I. G.F.F.'s Immigration History

U.S. Border Patrol encountered G.F.F. near El Paso, Texas, on May 15, 2024, after he unlawfully entered the United States without inspection by an immigration officer. *See* Declaration of Deportation Officer Michael Charles (“Charles Decl.”) ¶ 3, ECF No. 9. DHS determined pursuant to 8 U.S.C. § 1225(b)(1) that G.F.F. was inadmissible and subject to removal. *Id.* ¶ 3. Because G.F.F. established that he had a credible fear of persecution, he was placed into 8 U.S.C. § 1229a removal proceedings pursuant to 8 C.F.R. § 208.30(f). *Id.* ¶ 5. On May 19, 2024, DHS issued a Notice to Appear (“NTA”) charging G.F.F. as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Charles Decl. ¶ 6.

On May 20, 2024, G.F.F. was served with the NTA, enrolled in the Alternative to Detention (“ATD”) program, and released from custody. *Id.* ¶¶ 6, 7. He was ordered to appear at immigration court in Chicago on November 20, 2024. Mem. Op. and Order (the “Order”), ECF No. 17, at 2-3; Charles Decl. ¶ 6.

In October 2024, G.F.F. was terminated from the ATD program after missing an in-person check-in at a United States Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) office on July 18, 2024, and additional electronic check-ins. Charles Decl. ¶ 8. G.F.F. informed ICE that he would be traveling to New York. *Id.* He then failed to appear for his master calendar hearing before the Immigration Court in Chicago, which was rescheduled for January 2025. Order at 3; Charles Decl. ¶ 9.

 Homeland Security Investigations (“HSI”) Special Agents encountered G.F.F. at a home in Bronx, New York when executing an arrest warrant for another individual and took G.F.F. into custody. Charles Decl. ¶ 10. Venue for G.F.F.’s removal proceeding was changed to the Varick Street Immigration Court in New York. Order at 4; Charles Decl. ¶ 14. On December 30, 2024, counsel for G.F.F. entered an appearance with the immigration court. Order at 4; Charles Decl. ¶ 16. On January 24, 2025, G.F.F. filed written pleadings conceding his removability as charged in the NTA and applied for relief from removal. Order at 4; Charles Decl. ¶ 20.

The immigration court held a bond hearing on January 29, 2025. Order at 4; Charles Decl. ¶¶ 23, 24. The immigration judge determined that G.F.F. failed to meet his burden to show he was not a danger to the community and denied his request for bond. Order at 4; Charles Decl. ¶ 24. The immigration judge further determined that G.F.F. was “a very high flight risk.” Order at 5; Charles Decl. ¶ 24. On August 26, 2025, the BIA affirmed the immigration judge’s bond order. Order at 5; Charles Decl. ¶ 63.

On March 17, 2025, March 25, 2025, and April 2, 2025, G.F.F. appeared for his removal hearings by video teleconference. *Id.* ¶¶ 44, 49, 52. On June 20, 2025, the immigration judge denied G.F.F.’s application for relief and ordered him removed to Venezuela. *Id.* ¶ 61. On July 9, 2025, G.F.F. filed a Notice of Appeal of the immigration judge’s decision with the BIA. *Id.* ¶ 62.

II. The Alien Enemies Act Litigation

On March 15, 2025, President Trump issued Proclamation No. 10903, invoking the Alien Enemies Act (“AEA”) to remove Venezuelan nationals who are members of Tren de Aragua. *Id.* ¶ 41. 

 Charles Decl. ¶ 58; *see also G.F.F. v. Trump*, No. 25 Civ. 02886 (AKH)

(S.D.N.Y.). Pursuant to a preliminary injunction in that action, the Government is enjoined from, *inter alia*, removing G.F.F. from the United States under Proclamation No. 10903. Charles Decl. ¶ 59; *see also G.F.F. v. Trump*, 781 F. Supp. 3d 195, 202-03, 213 (S.D.N.Y. 2025). The Preliminary Injunction Order expressly provides “that nothing in this Order shall be construed to bar the transfer, removal, or release from immigration detention, of Petitioners pursuant to proceedings held under the Immigration and Nationality Act.” *G.F.F. v. Trump*, No. 25 Civ. 02886 (AKH), ECF No. 89. The Government has appealed the preliminary injunction order, *see id.*, ECF No. 96, and that appeal remains pending, *see G.F.F. v. Trump*, 25-1671 (2d Cir.).

III. G.F.F.’s Habeas Petition and the Court’s November 2025 Order

On September 5, 2025, G.F.F. filed a habeas petition commencing this action. *See* ECF No. 1 (“Pet.”). He asserted three claims: (1) the Government violated the Fifth Amendment by detaining him without a constitutionally adequate bond hearing; (2) the bond hearing burden allocation under current BIA practice violates the APA; and (3) this Court should release him on bail. Pet. ¶¶ 127-134.

On November 10, 2025, the Court held that G.F.F. was entitled to a “renewed bond hearing” due to his “prolonged detention.” Order at 8. The Court further held that G.F.F. was entitled, at the bond hearing, to have the Government “bear the burden of proving by clear and convincing evidence that G.F.F. is a risk of flight or a danger to his community.” *Id.* at 17. Moreover, “[i]n determining whether the Government has demonstrated by clear and convincing evidence that G.F.F. is a risk of flight or danger to the community, the IJ must consider the availability of alternatives to detention.” *Id.* The Court ordered that “[w]ithin seven calendar days . . . the immigration court must either hold a bond hearing at which the Government bears the burden of proving by clear and convincing evidence that G.F.F. is a risk of flight or a danger to

the community, or release G.F.F.” *Id.* at 19. Further, “[i]n determining whether to grant bond, the IJ shall consider the availability of alternative conditions of release, and in determining the amount of any bond imposed, the IJ shall consider G.F.F.’s ability to pay.” *Id.*

IV. The November 2025 Bond Hearing

Three days after the Court’s Order, on November 13, 2025, G.F.F. received a bond hearing. *See* Hearing Transcript (“Tr.”), ECF No. 19-2. In advance of the hearing, the Government and G.F.F. submitted evidence to the immigration court. The Government’s evidence included, among other things, records reflecting G.F.F.’s ATD reporting history. *See* ECF Nos. 19-5 at 44; 19-6 at 12. These records reflect that G.F.F. missed his daily biometric check-in on 15 occasions between August 8, 2024, and September 30, 2024. ECF No. 19-6 at 12. As a result, his enrollment in the ATD program was terminated on October 3, 2024. *Id.* at 13. The termination comments noted that G.F.F. “[l]eft a message . . . that he was going to NY for a job 09/04/23 and would be back for court in November,” and his last known address at the time ATD was terminated was in Chicago. *Id.* at 14. The submitted records also included a written personal statement of G.F.F.’s, dated February 20, 2025, in which he acknowledged that he missed his November 20, 2024, immigration court date. *See* ECF No. 19-5 at 44. The Government also submitted G.F.F.’s Form I-213, which reflected that he failed to appear for the November 2024 immigration court date, ECF No. 19-4 at 26, and the decision and order in G.F.F.’s removal proceedings, which ordered him removed from the United States, *id.* at 18.

At the outset of the bond hearing, the Government noted that it wanted to “cross-examine [G.F.F.] on his rebuttal statement.” Tr. at 2. G.F.F.’s counsel initially stated, “if you do think that testimony is necessary for my client to rebut, we will offer him,” but requested that the “testimony be limited to the issues at hand, particularly flight risk.” *Id.* The IJ stated that “the issue . . . is that

the government wants to cross examine him . . . they can do that.” *Id.* G.F.F.’s counsel then stated that it would not offer G.F.F. for testimony. *Id.* at 3. The IJ stated that if “he doesn’t answer questions, I’ll make a negative inference out of it.” *Id.* The IJ further explained that, “here we have clear and convincing evidence, which is a high burden for the government . . . I’m afraid . . . that failure to respond is sufficient to demonstrate by clear convincing evidence . . . danger of flight risk.” *Id.* at 4. G.F.F.’s counsel then “ask[ed] that the testimony be limited to the issues at hand.” *Id.* The Government argued that because G.F.F. had “presented a rebuttal statement here. It would [sic] for your honor, just to find that everything he wrote in there except [sic] as truthful and that it has rebutted if we’ve met our burden, it wouldn’t make sense without him being subject to cross-examination on that statement.” *Id.* The IJ instructed the parties to start “cross and redirect,” and noted that G.F.F.’s counsel could “raise objections to questions.” *Id.*

Following G.F.F.’s testimony, the IJ found that “the government ha[d] not met its burden to demonstrate with convincing evidence that [G.F.F. is] a danger.” *Id.* at 23. After hearing argument from the parties, the IJ additionally found that G.F.F. is a flight risk. *Id.* at 26. The IJ noted that G.F.F.’s “90% compliance rate” on ATD check-ins was problematic because “[i]t’s not as if he missed dates . . . here and there,” but rather “he went to New York and then he has 16, 15, 16 . . . check-ins he failed to respond to.” *Id.* The IJ further noted that G.F.F. testified that he continued to check-in even after he missed his November 2024 immigration court appearance, but that was impossible because his participation in the ATD program was terminated earlier. *Id.* Additionally, G.F.F. “has a removal order and he’s made it clear he’s very afraid to go back and doesn’t want to go back.” *Id.*

The IJ determined that G.F.F. is “a flight risk and I don’t think [there are] sufficient safeguards to release him to ensure that he would appear. . . .” *Id.* The IJ considered the possibility

of an ankle monitor, but determined that it would be insufficient because G.F.F. had “already shown a pattern of ignoring the requirements to report.” *Id.* at 27. With respect to alternatives to detention, the IJ noted that the ankle monitor was “the only other thing I can think of,” but it could be cut off. *Id.* The IJ concluded that G.F.F.’s “conduct indicates to me that he’s a flight risk and that . . . no alternatives to detention are feasible.” *Id.* Addressing G.F.F. directly, the IJ added, “I’ve listen[ed] to all the testimony, reviewed all the evidence,” and “I have a firm conviction that if you’re released on bond, you’ll abscond.” *Id.* G.F.F. did not appeal the IJ’s bond opinion to the BIA.

V. The Current Motion

On January 7, 2026, G.F.F. filed the pending motion, asserting that the November bond hearing failed to comply with this Court’s order. G.F.F. primarily argues that the IJ improperly shifted the burden of proof from the Government to G.F.F., Memorandum of Law in Support of Petitioner’s Motion (“Pet. Mot.”), ECF No. 19, at 7-11; the IJ failed to sufficiently consider alternatives to detention, *id.* at 12-16; and the Government failed as a matter of law to establish by clear and convincing evidence that G.F.F. is a flight risk, *id.* at 16-21. G.F.F. seeks to have this Court order his release or, alternatively, hold a bond hearing itself. *Id.* at 25.

ARGUMENT

I. Exhaustion

The Court “retains jurisdiction to review compliance with a conditional grant of the writ of habeas corpus, that is, to determine whether the Government properly cured the identified constitutional error.” *J.M.P. v. Arteta*, No. 25 Civ. 4987 (DEH), 2025 WL 2984913, at *12 (S.D.N.Y. Oct. 23, 2025) (internal quotation marks omitted); *see also Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 235 (W.D.N.Y. 2019) (“a federal court always retains jurisdiction to enforce

its lawful judgments, including habeas judgments, [and] the court has the authority to see that its judgment is fully effectuated” (internal quotation marks omitted)).

The decretal language of this Court’s November 10 Order directed the Government as follows:

Within seven calendar days of this Memorandum Opinion and Order, the immigration court must either hold a bond hearing at which the Government bears the burden of proving by clear and convincing evidence that G.F.F. is a risk of flight or a danger to the community, or release G.F.F. In determining whether to grant bond, the IJ shall consider the availability of alternative conditions of release, and in determining the amount of any bond imposed, the IJ shall consider G.F.F.’s ability to pay.

Order at 19.

There is no dispute that G.F.F. received a bond hearing within the time ordered by the Court and, as explained below, *see* Section III.A., *infra*, it is evident from the transcript that Government bore the burden of proof—indeed, the IJ determined that the Government failed to meet its burden as to dangerousness, *see* Tr. at 23—and that the IJ considered alternatives to detention, *see* Section III.B., *infra*; Tr. at 26-27. To the extent that G.F.F. is seeking to have this Court review the IJ’s determinations solely for the limited purpose of compliance with the Court’s prior order, *see* Section II *infra*, the Government does not contend that he must exhaust those assertions. To the extent, however, that G.F.F.’s arguments are beyond the scope of the Court’s November 10 Order, he should be required to administratively exhaust his claims through appeal to the BIA. *See Valbrun v. Hogan*, 439 F.3d 136 (2d Cir. 2006) (*per curiam*) (holding that a petitioner could not “evade BIA review merely by labeling his claim a due process claim” and waived his claim by failing to administratively exhaust it) (internal quotation and alterations omitted)); *see also Arana v. Decker*, No. 20 Civ. 4104 (LTS), 2020 WL 3833459, at *2 (S.D.N.Y. July 8, 2020) (“courts may require exhaustion as a prudential matter in the case of challenges to

immigration bond decisions”); *Bogle v. DuBois*, 236 F. Supp. 3d 820, 823 (S.D.N.Y. 2017) (“The proper procedure is to seek relief from the BIA and then, if the IJ is affirmed, file a habeas petition.”); *Paz Nativi v. Shanahan*, No. 16 Civ. 8496 (JPO), 2017 WL 281751, at *2 (S.D.N.Y. Jan. 23, 2017) (collecting cases).

“Exhaustion may be excused where: ‘(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.’” *Arana*, 2020 WL 3833459, at *2 (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)). But G.F.F. has not established grounds to excuse him from the exhaustion requirement. *See id.* at *3; *but see J.C.G. v. Genalo*, No. 24 Civ. 08755 (JLR), 2025 WL 88831, at *5 (S.D.N.Y. Jan. 14, 2025) (citing cases excusing exhaustion “when noncitizens challenge the burden allocation at a Section 1226(a) bond hearing”); *Fernandez Aguirre v. Barr*, No. 19 Civ. 7048 (VEC), 2019 WL 4511933, at *8 n. 6 (S.D.N.Y. Sept. 18, 2019) (excusing petitioner from exhaustion requirements on claims that IJ failed to comply with standard of proof ordered by Court). While G.F.F. contends that “delays inherent in the administrative process” warrant excusal from the exhaustion requirement here, Supplemental Memorandum of Law in Support of Petitioner’s Motion to Enforce the Court’s Memorandum Opinion and Order (“Supp. Mot.”), ECF No. 22, at 4, that rationale would permit non-exhaustion in every habeas case challenging a bond hearing determination. G.F.F. additionally maintains that this case raises constitutional issues “that the BIA cannot appropriately adjudicate,” *id.* at 5-6, but the BIA can

adjudicate whether the IJ erred in determining that the Government's evidence regarding flight risk satisfies the clear and convincing evidence standard.¹ *See Arana*, 2020 WL 3833459, at *2.

II. Standard of Review

As explained above, *see* Section I. *supra*, the Court retains jurisdiction to review compliance with its November 10 Order. *See J.M.P.*, 2025 WL 2984913, at *12; *Hechavarria*, 358 F. Supp. 3d at 235. But “Federal district courts are generally barred from reviewing immigration judge’s bond determinations.” *Arana v. Barr*, No. 19 Civ. 7924 (PGG) (DCF), 2020 WL 2094098, at *8 (S.D.N.Y. May 1, 2020). Pursuant to 8 U.S.C. § 1226(e), “[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” Thus, “[t]he Court lacks jurisdiction to review the IJ’s weighing of the evidence.” *R.R.M.C. v. Decker*, No. 22 Civ. 2952 (LGS), 2022 WL 4639674, at *3 (S.D.N.Y. Sept. 30, 2022).

This provision does not “limit habeas jurisdiction over constitutional claims or questions of law.” *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (quotation marks omitted). “Whether the IJ failed to apply the correct legal standard and to hold the government to its burden of proof is a question of law that this Court may review.” *R.R.M.C.*, 2022 WL 4639674, at *3 (cleaned up). “A decision is discretionary and therefore beyond this Court’s jurisdiction to review, when it pertains to the correctness of an IJ’s fact-finding or the wisdom of his exercise of

¹ G.F.F.’s appeal to the BIA of his January 2025 bond denial does not satisfy the exhaustion requirement for any challenge to the IJ’s flight risk determination at the November 2025 bond hearing. The determination at the November 2025 bond hearing has never been appealed to the BIA.

discretion.” *Zabaleta v. Decker*, 331 F. Supp. 3d 67, 72 (S.D.N.Y. 2018) (internal quotation marks omitted).²

“In reviewing a motion to enforce, it is important to emphasize that the Court’s task is narrow: it is to determine whether Respondents complied with this Court’s order, not to review the hearing evidence *de novo*.” *Arana*, 2020 WL 2094098, at *7 (cleaned up); *see also Bonilla v. Decker*, No. 22 Civ. 4501 (ER), 2024 WL 182315, at *4 (S.D.N.Y. Jan. 17, 2024) (same); *R.R.M.C.*, 2022 WL 4639674, at *3 (same); *Quitizaca v. Barr*, No. 20 Civ. 403 (LJV), 2021 WL 6797494, at *5 (W.D.N.Y. Jan. 5, 2021) (same); *Apollinaire v. Barr*, No. 19 Civ. 6285 (FPG), 2019 WL 4023560, at *3 (W.D.N.Y. Aug. 27, 2019) (same). “A district court must be mindful of its obligation to afford a degree of deference to the factfinder’s determinations” and not “set aside an [IJ’s] bond determination on discretionary or evidentiary grounds.” *Arana*, 2020 WL 2094098, at *7 (cleaned up).

III. The Government Complied with the Court’s November 10 Order

A. In Accordance with This Court’s Order, the Government Bore the Burden of Proof at the November 2025 Bond Hearing

In accordance with the November 10 Order, *see* Order at 19, the Government bore the burden of proof at the November 13 bond hearing. That is evident from the hearing transcript, including the IJ’s repeated statements regarding the Government’s burden. *See, e.g.,* Tr. at 27 (“I find that the government has failed to demonstrate that you’re [a] danger. However, they have demonstrated by clear and convincing evidence that you are a flight risk.”). It is also evident from the IJ’s reliance on Government evidence in making the flight risk determination.

² “[A]n unambiguous mischaracterization of the record raises a question of law.” *Zabaleta*, 331 F. Supp. 3d at 72 (internal quotation marks omitted).

In addressing G.F.F.'s flight risk, the IJ noted repeatedly that it was the Government's burden to establish, *see, e.g.*, Tr. at 26, and found that the evidence was sufficient to meet that burden, *id.* at 26-27. This evidence included Government records reflecting non-compliance with prior ICE check-in requirements, which the IJ expressly considered. Tr. at 26; ECF No. 19-6 at 12 (Government records listing dates of missed biometric check-ins). The IJ also noted, presumably based at least in part on the records of G.F.F.'s immigration history and related proceedings that were submitted by the Government, that G.F.F. "has a removal order and he's made it clear he's very afraid to go back and doesn't want to go back." Tr. at 26. The IJ then concluded, "[w]hen I look at all this and I look at his past conduct . . . I think he's a flight risk." Tr. at 26.

Despite the IJ clearly relying on evidence introduced by the Government to make a flight risk determination, G.F.F. argues that the IJ "impermissibly shifted the burden to G.F.F." by stating that if the Government did not have an opportunity to question G.F.F., the IJ would "make a negative inference." Mot. at 7-8. However, the IJ's comment about a "negative inference" was in reference to Plaintiff's rebuttal evidence; the burden of proof remained on the Government to establish flight risk in the first instance. The discussion regarding whether G.F.F. would testify concerned whether the Government could "cross-examine [G.F.F.] on his rebuttal statement." Tr. at 2. The IJ explained: "[H]ere we have clear and convincing evidence, which is a high burden for the government . . . I'm afraid . . . that failure to respond is sufficient to demonstrate by clear and convincing evidence of danger of flight risk. So just keep that in mind." Tr. at 4. It is well-settled that "when one party bears the burden of proof, testimony by the other party may rebut the showing made by the party bearing the burden." *Hechavarria*, 358 F. Supp. 3d at 242. The IJ's comments about drawing a "negative inference" were in the context of discussing G.F.F.'s rebuttal testimony, not the overall evidentiary burden, which the IJ consistently emphasized was on the Government.

Ultimately, it is clear from the hearing transcript that the IJ's conclusion that G.F.F. was a flight risk was based on the Government's evidence. *See* Tr. 26-27. The IJ considered G.F.F.'s proffered rebuttal explanations and arguments regarding noncompliance with prior check-in requirements and found them unpersuasive. *See* Tr. at 26. That the IJ let the Government question G.F.F. regarding his rebuttal submission does not shift the burden of proof.³ *Cf. Hassoun v. Searls*, 467 F. Supp. 3d 111, 123 (W.D.N.Y. 2020) ("There is no merit to Petitioner's argument that he, like a criminal defendant, has an absolute right not to testify in this matter.").

G.F.F. also mistakenly claims that the IJ did not hold the Government to its burden of proof because it "disallow[ed] portions of [G.F.F.'s] rebuttal testimony, particularly those related to factors impacting his ability to recall specific chronology." Mot. at 9. The IJ considered the medical evidence submitted by G.F.F., but found G.F.F.'s assertions of memory loss "bounce[d] out" by his provision of a detailed statement to the immigration court. Tr. at 26 (Noting an updated doctor's

³ G.F.F.'s reliance on *Matter of Guevara*, 20 I&N Dec. 238 (BIA 1990), Mot. at 8, is misplaced. *Guevara* addressed whether the Government could meet its prima facie burden in immigration proceedings based solely on the alien's silence. *Id.* at 242 ("the respondent's silence alone does not provide sufficient evidence, in the absence of any other evidence of record at all, to establish a prima facie case of alienage, sufficient to shift the burden of proof to the respondent"). The BIA distinguished instances in which "adverse evidence" was "strengthened" by an alien's silence or silence failed to rebut the Government's case. *Id.* at 241-42. The BIA noted that "a respondent's silence may fairly corroborate other evidence presented for the record," and that "a respondent has no right to remain silent at his deportation hearing when he is asked nonincriminating questions." *Id.* at 243.

report indicating that G.F.F.'s "situation is more severe. His PTSD is more severe, means [sic] his memory is more severe. And yet he's provided a new detailed statement for this court."). In any event, contrary to G.F.F.'s assertion, Mot. at 9, evidence regarding G.F.F.'s memory could not have "call[ed] into question" the Government's primary evidence regarding flight risk, namely G.F.F.'s history of non-compliance with ICE reporting requirements and desire to remain in the United States, despite his removal order. *See* Tr. at 26.

G.F.F. further contends that the Government never made a showing regarding alternatives to detention. *See* Mot. at 9-10. But the Government argued at the hearing:

[The Government] submitted evidence that the respondent already has a proven track record of failure to comply with court orders, failure to heed advisements about court ordered requirements and has already failed to comply with alternatives to detention. Anything apart from a full denial of bond in this case would be guaranteeing his failure to appear, notably where his removal is becoming more and more imminent in this case.

Tr. at 21. In finding that alternatives to detention would be insufficient, the IJ explicitly relied on the Government's evidence of G.F.F.'s prior non-compliance with reporting requirements. Tr. at 26-27 ("a lot of times what I do is I set up [inaudible] requirements and an ankle monitor [B]ut he's already shown a pattern of ignoring the requirements to report . . . and as for an ankle monitor, which is really the only other thing I can think of[,] that could be just cut off by somebody and they disappear"). Contrary to G.F.F.'s contention, *see* Mot. at 9-10, nothing in the Court's November 10 Order required the Government to present evidence at the bond hearing regarding the inadequacy of each specific potential alternative to detention, so long as the evidence supported the IJ's determination that the potential alternatives would be insufficient. *See* Order at 17 ("In determining whether the Government has demonstrated by clear and convincing evidence that [G.F.F.] is a risk of flight . . . the IJ must consider the availability of alternatives to detention.").

The Government therefore met its burden at the hearing of establishing by clear and convincing evidence that G.F.F. was a flight risk and continued detention was warranted.

B. In Accordance with This Court's Order, the Immigration Court Considered Alternatives to Detention

As noted above, the IJ considered alternatives to detention and found them inadequate in light of G.F.F.'s reporting history. *See* Tr. at 27 ("His conduct indicates to me that he's a flight risk and that there are no alternatives for him, no alternatives to detention are feasible."). These findings are more than sufficient. *See Sophia v. Decker*, No. 19 Civ. 9599 (LGS), 2020 WL 1957373, at *2 (S.D.N.Y. Apr. 23, 2020) (finding that IJ sufficiently considered alternatives to detention where IJ noted that she was required by court order to meaningfully consider such alternatives, discussed her authority to set conditions on release, and concluded that under circumstances of the case alternatives would be not be appropriate); *cf. Bonilla*, 2024 WL 182315, at *6 ("although the IJ made no explicit mention of alternatives to detention . . . nor delineated any considered and rejected alternatives in the subsequent opinion, he did hold that no bond or alternatives to detention could ameliorate the danger" that the petitioner would engage in criminal activity).

G.F.F. suggests that it was insufficient for the IJ to rely on general attributes of ankle monitors in concluding that an ankle monitor would not be a sufficient alternative to detention, *see* Mot. at 14, but courts in this district have made similar assessments in the criminal bond context, *see United States v. Kwok*, No. 23 CR. 118-1 (AT), 2023 WL 3027440, at *7 (S.D.N.Y. Apr. 20, 2023) ("GPS monitoring is inadequate, as ankle monitors can be removed and ensure only a reduced head start should a defendant decide to flee."). Taking these considerations into account,

along with G.F.F.'s individual history, the IJ sufficiently considered and rejected the possibility of an ankle monitor. *See Sophia*, 2020 WL 1957373, at *2.⁴

While the IJ did not expressly consider monetary bond, he determined that G.F.F. was a flight risk given his reporting history and order of removal, no matter what available conditions were imposed on his release. *See* Tr. at 26-27. In finding that G.F.F. was “a flight risk” and that there were not “sufficient safeguards to release him to ensure that he would appear,” the IJ implicitly found that release on bond would be insufficient to ensure G.F.F.'s appearance. It was therefore unnecessary to consider G.F.F.'s ability to pay—which goes to the appropriate amount of the bond—as the IJ determined that G.F.F. was a flight risk whose appearance could not be assured through alternatives to detention.⁵ *See* Order at 19 (“In determining whether to grant bond,

⁴ G.F.F. argues that “ICE presented no evidence to explain why home confinement . . . would not mitigate flight risk,” but it does not appear that the possibility of home confinement was explicitly raised at the bond hearing. At the hearing, G.F.F.'s counsel raised the possibility of “geolocation” or “in-person check-ins.” Tr. at 25. Regardless, the IJ's concern regarding the likelihood that G.F.F. would abscond in light of his prior non-compliance with reporting requirements is relevant to all of these alternatives.

⁵ The Second Circuit has held, in the context of an alien detained pursuant to 8 U.S.C. § 1226(c), that it was proper for a district court to direct an IJ, “in setting [a detainee's] bond and establishing appropriate terms for his potential release, to consider his ability to pay and alternative means of assuring appearance.” *Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024). As noted above, however, ability to pay is relevant to the amount of bond and therefore need not be considered by the IJ if the IJ determines that bond is inappropriate due to flight risk.

the IJ shall consider the availability of alternative conditions of release, and in determining the amount of any bond imposed, the IJ shall consider G.F.F.'s ability to pay"); *cf. Hernandez v. Sessions*, 872 F.3d 976, 981 n.3 (9th Cir. 2017) ("The fact that ICE or an IJ has determined that a non-citizen is eligible for release on bond shows that he is not so great a flight risk as to require detention without bond. The question then remains: what amount of bond is reasonably likely to ensure the non-citizen's appearance and how should that amount be determined?"). Here, the IJ heard from G.F.F.'s counsel regarding his ability to pay, *see* Tr. 25, but, in accordance with this Court's Order, *see* Order at 19, the IJ did not include an ability to pay analysis in the ultimate determination because no bond was set.

C. The IJ Did Not Err as a Matter of Law in Finding that G.F.F. Posed a Flight Risk That Could Not Be Mitigated by Reasonable Conditions of Release

Because this is a motion to enforce a previously ordered bond hearing, the question "is whether . . . the [IJ] relied upon proof that *could not possibly establish* by clear and convincing evidence—as a matter of law"—that G.F.F. was a flight risk. *See Medley v. Decker*, No. 18 Civ. 7361 (AJN), 2020 WL 1033344, at *2 (S.D.N.Y. Mar. 3, 2020); *see also Apollinaire*, 2019 WL 4023560, at *3 (same). "[C]lear and convincing evidence . . . means something more than preponderance of the evidence, and something less than beyond a reasonable doubt." *Arana*, 2020 WL 2094098, at *7 (quoting *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985) (internal quotation marks omitted; alterations in original)).

As discussed above, *see* Section III.A. *supra*, in finding that G.F.F. was a flight risk the IJ expressly relied on G.F.F.'s prior noncompliance with reporting requirements. Government records submitted to the IJ reflected that G.F.F. missed 15 biometric check-ins between August 8, 2024 and September 30, 2024, ECF No. 19-6 at 12, and he was terminated from the ATD program on October 3, 2024, *id.* at 14. Further, though it was not expressly referenced as part of the IJ's

rationale, Petitioner missed an immigration court appearance in Chicago on November 20, 2024, before being arrested in New York in December 2024. *See, e.g., id.* at 20. It does not appear that G.F.F. contests these facts, though he disputes their significance. Nor does G.F.F. appear to contest that the IJ could consider his record of compliance with reporting requirements. *Cf. Concepcion v. Barr*, No. 20 Civ. 06080 (EAW), 2021 WL 1807870, at *4 (W.D.N.Y. May 6, 2021) (noting that, in assessing flight risk, the IJ considered, among other things, the petitioner’s “record of appearance in court . . . and any immigration violations”).

The IJ also noted that G.F.F. “has a removal order” but has “made it clear he’s very afraid to go back and doesn’t want to go back.” Tr. at 26. This is evidence that the IJ can consider in assessing flight risk. *See Lawrence v. Reno*, No. 00 Civ. 4559 (LAK), 2001 WL 80078, at *1 (S.D.N.Y. Jan. 30, 2001) (finding no abuse of discretion in consideration of “petitioner’s expressed fears of returning to Jamaica” among “other factors” in finding petitioner a flight risk); *cf. Apollinaire*, 2019 WL 4023560, at *3 (considering entry of a final removal order in weighing flight risk); *Gutierrez Cupido v. Barr*, No. 19 Civ. 6367 (FPG), 2020 WL 103477, at *3 (W.D.N.Y. Jan. 9, 2020) (noting that the petitioner “was subject to an administratively final order of removal, which diminished his incentive to appear for further removal proceedings” (internal quotation marks and alterations omitted)). G.F.F. does not appear to contest that he does not want to go back to Venezuela, or that he has a removal order. Instead, G.F.F. faults the IJ for not considering “the merits of G.F.F.’s BIA appeal” or the fact that he could further appeal the BIA’s determination to the Second Circuit. *See Mot.* at 18. But whether it was expressly addressed or not, the IJ was familiar with the merits of Petitioner’s appeal, as he had issued the removal order, which was also in the bond hearing record. *See ECF No. 19-4* at 18. Moreover, whatever the likelihood that G.F.F.’s order of removal will become final, it was within the IJ’s purview to consider that the

existing order of removal, in conjunction with G.F.F. history of non-compliance with reporting requirements and fear of return to his home country, might incentivize G.F.F. to abscond.

G.F.F.'s additional assertion that the IJ "mischaracterized the record" appears to refer primarily to the IJ's characterization of the undisputed evidence regarding G.F.F.'s prior reporting history. *See* Mot. at 19-20. Contrary to G.F.F.'s assertion, it was not a "mischaracterization" for the IJ to conclude that there was a "pattern of ignoring the requirements to report," nor was it a "mischaracterization" to balance a report regarding G.F.F.'s memory against his submission of a detailed statement to the Court. Mot. at 20-21. Additionally, while the IJ stated that G.F.F. "went to New York and then he has 16, 15, 16 check-ins he failed to respond to," this is not meaningfully different than the facts that appear to be undisputed, namely that G.F.F. missed 15 check-ins, all between August 8, 2024, and September 30, 2024, and travelled to New York on or around September 4, 2024. *See* Mot. at 19-20; ECF at 19-6 at 12, 14. G.F.F. therefore fails to identify any mischaracterization of the record suggesting that the IJ relied on proof that could not establish by clear and convincing evidence, as a matter of law, that G.F.F. was a flight risk.

Taken together, the hearing evidence was sufficient to establish by clear and convincing evidence, as a matter of law, that G.F.F. is a flight risk and for the IJ to deny bond. *See Adejola v. Barr*, 439 F. Supp. 3d 120, 129 (W.D.N.Y. 2020). "To the extent [G.F.F.] is arguing that the IJ's assessment of that evidence was wrong or that [the IJ] erred in [the IJ's] credibility determinations or the weight [the IJ] gave to particular aspects of the record, such arguments are beyond the scope of this Court's jurisdiction." *Id.* at 130. Because all of G.F.F.'s arguments regarding compliance with the Court's November 10 Order fail, G.F.F.'s motion should be denied.

IV. Release Is Not the Appropriate Relief on This Motion

To the extent the Court finds any deficiencies in the Government's compliance with the November 10 Order, the appropriate remedy under the circumstances would be remand for

clarification by the IJ or a new bond hearing, not G.F.F.'s release. "[L]ogically, the equitable power of the district court in deciding a habeas corpus petition includes the ability to grant the state additional time beyond the period prescribed in a conditional writ to cure a constitutional deficiency." *Barnett v. Neal*, 860 F.3d 570, 574 (7th Cir. 2017); *but see Grasso v. Norton*, 520 F.2d 27, 38 (2d Cir. 1975) (holding, in the criminal habeas context, that it was within the district court's "sound discretion" to order release from custody after the Government's non-compliance with a conditional writ). While, as G.F.F. notes, some courts in this District have ordered petitioners released in instances where the Government failed to provide a bond hearing that met the conditions of a prior habeas order, *see* Mot. at 22 (citing cases), this is "not a case where the IJ blatantly disregarded this Court's order," *see Johal v. Garland*, No. 20 Civ. 1315 (LJV), 2021 WL 5577663, at *5 (W.D.N.Y. Nov. 30, 2021). Rather, a bond hearing was held well within the time ordered by the Court at which the IJ repeatedly reiterated that the Government had the burden of proof and considered that proof, as well as whether alternatives to detention might be appropriate.

Accordingly, should the Court determine that any aspect of the bond hearing was not in compliance with its November 10 Order, the Court should remand for a further bond hearing at which the IJ can make more detailed findings on the record as appropriate. *See Jules v. Searls*, No. 21 Civ. 6342 (CJS), 2022 WL 20055440, at *9 (W.D.N.Y. Aug. 8, 2022) (remanding the matter "for clarification by the IJ and/or a new hearing"); *Johal*, 2021 WL 5577663, at *6 (remanding to the IJ to "clarify the evidence and standard of proof supporting her determination that possible alternatives to detention would not adequately serve the government's interests"); *Blandon v. Barr*, 434 F. Supp. 3d 30, 42 (W.D.N.Y. 2020) (on motion to enforce bond hearing order in habeas proceeding, remanding where district court order did not authorize release); *Argueta Anariba v. Shanahan*, No. 16 Civ. 1928 (KBF), 2017 WL 3172765, at *4 (S.D.N.Y. July 26, 2017)

(remanding to IJ for “clarification and application of the correct standard” following court-ordered hearing).

CONCLUSION

For the foregoing reasons, the Court should deny G.F.F.’s motion to enforce the Court’s November 10, 2025, Opinion and Order.

Dated: New York, New York
February 3, 2026

Respectfully submitted,

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CERTIFICATION

Pursuant to Local Civil Rule 7.1(c) and Section III.D. of the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 6,735 words.

/s/ Mollie Kornreich

Mollie Kornreich