

The IJ and respondents acknowledged that Petitioner established she is not a danger to the community. On the question of flight risk, the IJ did not acknowledge any favorable factors, such as her marriage to her US citizen husband and pending I-130 petition. He however concluded, without reasoned explanation, that these factors were outweighed by Petitioner's immigration case remaining on appeal with the Board of Immigration Appeals. The IJ's reasoning was anchored not in a forward-looking assessment of whether Petitioner is likely to appear for future proceedings. In reaching his conclusion, the IJ concluded that since the petitioner's case remains on appeal with the Board of Immigration Appeals, that she remains a flight risk and would not appear for any future hearings or requirements from immigration. The IJ failed to meaningfully engage with material evidence showing the respondent is not a flight risk, nor did he properly place the burden on respondents. He also ignored critical evidence, including the petitioner's ability to seek permanent status through her US citizen husband.

The petitioner remains in the custody of the Department of Homeland Security at the Butler County Jail. Petitioner respectfully requests that this Court order her immediate release, and in the alternative find that the bond hearing failed to comply with this Court's order and direct that a new hearing be conducted consistent with the requirements of procedural due process.

FACTUAL AND PROCEDURAL BACKGROUND

On May 4, 2026, this Court granted Petitioner's petition for a writ of habeas corpus, ordered her immediate release, or an individualized bond hearing within seven days, with the respondents bearing the burden to show flight risk or danger to the community by clear and convincing evidence. The bond hearing took place on May 11, 2026, before IJ Patrick Burke. Respondents

scheduled this hearing at 3 pm on the seventh day, informing counsel only one hour prior to the hearing. Counsel only received notice after counsel for the Department of Justice called counsel's office and informed him of the bond hearing. Respondents did not otherwise inform counsel of this hearing. Counsel then rushed to submit whatever evidence he had for this bond hearing within the given time limit. She submitted proof of her marriage to her US citizen husband, a copy of her pending I-130 petition, proof of her ownership in a small business, and numerous letters of support. The Immigration Judge (IJ) admitted in the hearing that he himself only received notification of the hearing half an hour previously, which did not afford him enough time to review all evidentiary submissions.

The Respondent did not argue that the Petitioner is a danger to the community, instead focusing their entire argument on flight risk. The IJ found that Petitioner established she is not a danger to the community. On flight risk, the IJ did not acknowledge any of Petitioner's community ties or pending I-130 petition but instead focused his denial of bond on that she has a case on appeal with the Board of Immigration Appeals. *See* Exhibit 1. IJ Burke stated that electronic monitoring would not be sufficient to ensure respondent's appearance and that is even more incentive for non-compliance with a case on appeal. *Id.*

ARGUMENT

As a threshold matter, this Court has jurisdiction to review Petitioner's due process claim. While 8 U.S.C § 1226(e) states that "the Attorney General's discretionary judgment regarding" detention or release of noncitizens under § 1226 "shall not be subject to review," the statutory provision does not bar review of constitutional challenges to those proceedings. *See Miranda v*

Garland, 34 F.4th 338, 352-53 (4th Cir. 2022). “[W]hether an immigration judge must consider certain factors” in § 1226(a) bond proceedings is a “‘constitutional challenge’ to the procedures adopted by the Attorney General for all detention decisions under § 1226(a). As a result, § 1226(e) does not bar [judicial] review.” *Id.*, 34 F.4th at 353. See also *Mejia Orosco v. Lyons, et al.*, 1:25-cv-01762, Dkt. 20 at 4 (E.D. Va. Dec. 1, 2025) (Trenga, J.) (citing *Miranda*, 34 F.4th at 352-53, 358-59); *Mendez Trigueros v. Guadian, et al.*, 1:26-cv-00205, Dkt. 13 at 3-4 (E.D. Va. Feb. 18, 2026) (Trenga, J.); *Aguilon Fuentes v. Bondi, et al.*, 1:26-cv-00167, Dkt. 14 at 3 (E.D. Va. Feb. 24, 2026) (Trenga, J.); *Said v. Noem*, 3:25-cv-938, 2026 U.S. Dist. LEXIS 23475 (W.D. NC Feb. 4, 2026) (Cogburn, J.) (“Under § 1226(e), district courts have jurisdiction to review an Immigration Judge's discretionary bond denial only where that bond denial is challenged as legally erroneous or unconstitutional. (internal citation omitted). 8 U.S.C § 1252(a)(2)(B)(ii) does not preclude judicial review or questions of law arising from an agency’s use of discretionary power. See *Mantena v. Johnson*, 809 F.3d 721, 728 (2d Cir, 2015); *Pinho v. Gonzalez*, 432 F.3d 193, 204 (3d Cir. 2005); *Mireles Valdez v. Ashcroft* 349 F.3s 213, 215-216 (5th Cir, 2003); *Morales Morales v. Ashcroft*, 384 F.3d 418, 423 (7th Cir. 2004); *Mejia Rodriguez v. US Department of Homeland Security* 562 F.3d 1137, 1143-1144 (11th Cir. 2009).

In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court held that § 1226(e) does not preclude “constitutional challenges to ... legislation authorizing [immigration] detention without bail.” *Id.*, 538 U.S. at 517 (2003). In *Hatami v. Chertoff*, 467 F. Supp. 2d 637 (E.D. Va. 2006), Judge Ellis stated that if the petitioner “challenge[d] the constitutionality of the statutory framework permitting his detention without bail[,]” then § 1226(e) “would not preclude judicial review.” *Id.*, 467 F. Supp. 2d at 640-41. This Court ordered that the Federal Respondents provide

Petitioner with an individualized bond hearing that comports with procedural and substantive due process, with the government bearing the burden by clear and convincing evidence. This Court has jurisdiction to decide whether the bond hearing Petitioner received was constitutionally adequate.

In *Prieto-Romero v. Clark*, the Ninth Circuit held that § 1226(e) precluded review of the amount of the petitioner's bond set by the IJ. *Id.*, 534 F.3d 1053, 1067 (9th Cir. 2008). At the same time, the court stated that where a noncitizen "contends that an unreasonable bond amount precludes her release from detention that is statutorily unauthorized," such a challenge would be "a fit subject for judicial review." *Id.* Thus, the court suggested that § 1226(e) does not bar judicial review of constitutional challenges to bond proceedings. Later, in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), the Ninth Circuit held that the district court "had habeas jurisdiction to review Singh's claims of constitutional and legal error" in his habeas petition alleging that there were "various procedural and substantive due process violations" in his bond hearing. *Id.*, 638 F.3d at 1201-02. Although under § 1226(e), "the Attorney General's 'discretionary judgment ... shall not be subject to review,' claims that the discretionary process itself was constitutionally flawed are 'cognizable in federal court on habeas because they fit comfortably within the scope of § 2241.'" *Id.*, 638 F.3d at 1202 (quoting *Gutierrez-Chavez v. INS*, 298 F.3d 824, 829 (9th Cir. 2002)).

This Court also has jurisdiction under § 1252(a)(2)(B)(ii). The statute provides that "no court shall have jurisdiction to review" any decision "of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General." *Id.*

However, § 1226(e) permits judicial review of constitutional challenges to the petitioners' bond hearings. See, e.g., *Asemani v. Att'y Gen.*, 140 F. App'x 368, 376 (3d Cir. 2005); *Carrillo-Lozano v. Stolc*, 669 F. Supp. 2d 1074, 1079 (D. Ariz. 2009); *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 453 (D.N.J. 2004).

In *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001), “the Supreme Court held that § 1252(a)(2)(B)(ii) did not bar jurisdiction where the [noncitizens] ‘challenge[d] the extent of the Attorney General’s authority under the post-removal-period detention statute,’ which ‘is not a matter of discretion.” *Miranda*, 34 F.4th at 353 n.6. “Section 1252(a)(2)(B), as interpreted by the Supreme Court, does not foreclose judicial review” of “challenges to the procedures used in a Section 1226 bond hearing.” *Mejia Orosco*, Dkt. 20 at 4 (citing *Miranda*, 34 F.4th at 353 n.6). See also *Mendez Trigueros*, Dkt. 14 at 4; *Aguilon Fuentes*, Dkt. 14 at 3. Since Petitioner is not challenging the IJ’s discretionary decision but rather that the IJ did not provide Petitioner with substantive and procedural due process, § 1252(a)(2)(B)(ii) does not preclude judicial review.

The question before this Court is not whether the IJ’s bond determination was correct or incorrect. The question is whether the individualized bond hearing this Court ordered—one that satisfies the requirements of procedural due process—actually took place. For the reasons set forth below, it did not.

Procedural due process requires, at minimum, a meaningful hearing—one in which the adjudicator considers the evidence presented, engages in reasoned analysis, and provides an explanation sufficient to permit review. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The

Supreme Court has identified three factors for evaluating whether a particular proceeding satisfies due process: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the Government's interest. *Id.* at 335. The private interest at stake here is physical liberty—"the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); see also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("In our society liberty is the norm, and detention . . . is the carefully limited exception.") (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). When the private interest is this weighty, the procedures used to deprive an individual of that interest must be correspondingly robust.

As relevant here, due process requires that immigration detention "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas*, 533 U.S. at 690). Immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm and must be accompanied by adequate procedural protections to ensure that those goals are being served. See *Zadvydas*, 533 U.S. at 690–91. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

A bond hearing that has the form of due process but not the substance does not satisfy this standard. As set forth below, the IJ's proceeding failed to bear a reasonable relation to the legitimate purpose of assessing flight risk, was not accompanied by adequate procedural

protections, and the risk of erroneous deprivation was high. The procedures used were deficient in multiple respects.

The IJ's flight risk analysis was backward-looking rather than predictive and relied on factors common to every individual in removal proceedings that has a case on appeal. A flight risk determination is inherently forward-looking: it asks whether the individual is likely to appear for future proceedings. The *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006), factors reflect this orientation, encompassing considerations such as fixed address, family ties, employment history, and record of appearance—all of which speak to the likelihood of future compliance.

The IJ's analysis departed from this framework. Rather than assessing whether Petitioner is likely to appear for future proceedings, the IJ focused on Petitioner's case remaining on appeal with the Board of Immigration Appeals. The Immigration Judge ignored that the petitioner has a pending I-130 petition and has appeared at or cooperated with every step of her immigration case in the past. The IJ failed to articulate how having a case on appeal demonstrates that Petitioner is likely to flee rather than appear for proceedings that could lead to the lawful status she has every incentive to obtain. The IJ also failed to acknowledge that Petitioner's case is on appeal and is therefore not a final order of removal. Furthermore, the IJ's refusal to consider any alternatives to detention to ameliorate flight risk concerns violated this court's habeas order.

This backward-looking approach does not "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore*, 538 U.S. at 527. The legitimate purpose of a bond determination is to assess flight risk and danger—not to catalog past immigration violations.

Civil immigration detention cannot serve a punitive purpose. *Zachvydas*, 533 U.S. at 690. When the IJ's reasoning dwells on what Petitioner did in the past rather than what she is likely to do in the future, the resulting detention is not reasonably related to a legitimate regulatory purpose. The IJ's focus on these factors rendered that proceeding to an empty ritual the outcome of which was predetermined before the first piece of evidence is presented. It was not an individualized bond hearing. The IJ made no note of the strength of Respondent's community ties. The only factor the IJ considered was that the petitioner's immigration case was currently on appeal with the Board of Immigration Appeals. If having a case on appeal makes an individual a flight risk, then no person with a case on appeal would be eligible for bond. No similarly situated individual could ever meet the burden on flight risk. The second Mathews factor—the risk of erroneous deprivation—is at its zenith when the adjudicator's framework makes a particular outcome functionally inevitable regardless of the evidence presented. An individual's bond hearing fails to comport with due process where an Immigration Judge relies on considerations that would lead to an automatic denial of bond in all cases. See *Lemus Crispin v. Bondi*, No 1:26-CV-191 (LMB/WEF), 2026 WL 768859, ¶ 5 (E.D. Va. Mar. 18, 2026), which appears to be the situation here when denying bond solely based on having a case on appeal.

A factor-by-factor analysis under *Matter of Guerra* confirms the degree to which the IJ's backward-looking approach distorted the flight risk inquiry. *Guerra* identifies nine factors an Immigration Judge should consider in evaluating bond. See 24 I&N Dec. at 40. Petitioner presented favorable evidence on nearly all of these factors. Instead of considering those factors in their totality the IJ focused only on the factor of “the [noncitizen]'s flight risk and based that

flight risk analysis entirely on one piece of evidence, that the respondent's case is currently on appeal with the Board of Immigration Appeals.

The IJ Failed to Meaningfully Engage with Material Evidence Bearing on Flight Risk.

Due process requires not merely that a hearing take place, but that it be meaningful. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (“A fundamental requirement of due process is ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’”) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). “[I]n immigration bond hearings, due process requires the IJ to consider all relevant evidence proffered by the detainee to assess flight risk or danger.” *Said v. Noem*, 3:25-cv-938, 2026 U.S. Dist. LEXIS 23475 at *14 (W.D. NC Feb. 4, 2026). A hearing is not meaningful if the adjudicator fails to consider material evidence, declines to provide a reasoned explanation, or reaches conclusions untethered to the record. The IJ's proceeding fell short of this standard in multiple respects.

The IJ Entirely Ignored Evidence of Petitioner's Eligibility for obtaining eventual permanent status through her US citizen husband's pending I-130 petition. The Petitioner presented evidence that she has a pending I-130 petition with USCIS, pending since October 2025, that would allow her to either seek adjustment of status or consular processing with a waiver. Petitioner submitted evidence to support her eligibility as it bears on her likelihood to appear at future proceedings. These facts were not considered by the IJ. Rather they were summarily dismissed as speculative with no further analysis.

The hearing was not the individualized assessment this Court's order contemplated. Procedural due process requires the adjudicator to consider the evidence presented; it does not permit the adjudicator to ignore it. See *Mathews*, 424 U.S. at 333, 349.

The Cumulative Effect of These Deficiencies Demonstrates That the Hearing Did Not Comply with This Court's Order. Viewed in isolation, any one of the deficiencies described above would raise serious due process concerns. Viewed together, they demonstrate that the hearing this Court ordered did not take place. The record before the IJ included ample evidence to mitigate any concerns related to flight risk. Against this record, the IJ relied on factors common to virtually every undocumented individual in removal proceedings who now has a case on appeal due to the erroneous denial of bond in their first attempt to seek release due to guidance IJs received previously that anyone with an illegal entry is ineligible for bond. The considerations under which the petitioner was determined to be a flight risk were so lacking in probative value as to deprive her of sufficient due process. See *Mendez Trigueros v. Guadian*.

The IJ's decision had the form of a hearing but not the substance. The forward-looking evidence was acknowledged and then overridden; the evidence that did not fit was ignored, mischaracterized, or weaponized. This is not the individualized, reasoned assessment that procedural due process demands and that this Court ordered. Nor was the burden properly placed on the respondents, as their only piece of evidence was that the respondent's case remains on appeal with the Board of Immigration Appeals, a commonality among a majority of those granted habeas ordered bond hearings.

Applying the Mathews framework, all three factors confirm that the procedures used were constitutionally inadequate. First, the private interest at stake—physical liberty—is of the highest order. *Hamdi*, 542 U.S. at 529. Second, the risk of erroneous deprivation through the procedures, mischaracterization, and disregard of evidence on the record actually used was high and increased the likelihood that the IJ reached an erroneous result. Third, the Government’s legitimate interest in immigration enforcement does not require or justify proceedings that ignore evidence, make untested findings, and substitute a backward-looking catalog of past violations for the individualized, forward-looking assessment that due process requires. A new hearing that actually complies with due process imposes no undue burden on the Government; it simply requires the Government to prevail through constitutionally adequate procedures.

Moreover, the detention that results from the IJ’s order does not “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore*, 538 U.S. at 527. The IJ found that Petitioner is not a danger to the community. The sole remaining justification for detention is flight risk. But the IJ’s flight risk determination was not grounded in a genuine, forward-looking assessment of whether Petitioner will appear—it was grounded in a one rule fits all, where anyone with a case on appeal is a flight risk who will not comply or show up for future hearings. Detention premised on such reasoning—rather than on an individualized assessment of the evidence bearing on future appearance—is not reasonably related to the legitimate regulatory purpose of ensuring appearance. Due process does not permit it.

Where a federal court has ordered a constitutionally adequate bond hearing and the immigration court has failed to provide one, the district court possesses equitable authority to fashion an appropriate remedy—including ordering release. This Court gave the immigration court the

opportunity to conduct a hearing that satisfies due process. That opportunity was not taken. Under these circumstances, remanding for yet another hearing before the same tribunal that produced these deficiencies would not adequately protect Petitioner's constitutional rights. Accordingly, this Court should exercise its equitable authority to order Petitioner's immediate release. In the alternative, this Court should conduct its own bond hearing to ensure that the determination is made through constitutionally adequate procedures. See *Demore*, 538 U.S. at 527; *Marshall*, 446 U.S. at 242.

RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Find that the bond hearing did not comply with this Court's order requiring a hearing that satisfies the requirements of procedural due process;
2. Find that the IJ improperly shifted the burden to the Petitioner;
3. Exercise its equitable authority to order Petitioner's immediate release, on such conditions as this Court deems appropriate, given the IJ's failure to conduct a constitutionally adequate hearing despite having been afforded the opportunity to do so;
4. In the alternative, order that petitioner be released on a bond of \$1,500
5. In the alternative, conduct its own bond hearing to determine the conditions of Petitioner's release;
6. In the further alternative, order that a new bond hearing be conducted before a different Immigration Judge, consistent with the requirements of procedural due process, including meaningful engagement with the evidence presented, reasoned analysis of the *Matter of Guerra*

factors and actual notice and an opportunity to respond before adverse factual findings are relied upon;

7. Enjoin the respondent's from re-detaining the petitioner unless her re-detention is ordered at a custody hearing before a neutral arbiter in which she is determined to be a flight risk or danger to the community; and

8. Grant such other and further relief as this Court deems just and proper.

CONCLUSION

Petitioner does not ask this Court to substitute its judgment for that of the Immigration Judge on the question of bond, but when this Court orders a hearing that satisfies procedural due process and shifts the burden to the respondents, and the hearing that takes place follows none of those requirements, this Court is entitled to conclude that the immigration court process has failed and to exercise its own equitable authority. Accordingly, the Court should order Petitioner's immediate release. In the alternative, this Court should order a minimum bond of \$1,500. In the alternative, the Court should conduct its own bond hearing. Petitioner respectfully requests that the Court grant the relief requested herein.

Respectfully submitted,

/s/Krishna J Mahadevan

Dated: 05/12/2026